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Federal Register

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## DEPARTMENT OF ENERGY

### 10 CFR Part 431

[Docket Number EERE-2008-BT-STD-0015]

RIN 1904-AB86

#### Energy Conservation Program: Energy Conservation Standards for Walk-in Coolers and Freezers

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

**ACTION:** Publication of determination.

**SUMMARY:** The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes that the U.S. Department of Justice (DOJ) make a determination on the impact, if any, on the lessening of competition likely to result from a U.S. Department of Energy (DOE) proposed rule for energy conservation standards and that DOE publish the determination in the *Federal Register*. DOE published its final rule for energy conservation standards for walk-in coolers and freezers on June 3, 2014, and is today publishing DOJ's determination on such proposed rule.

**DATES:** February 24, 2015.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-5B, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 287-1692. Email: [walk-in\\_coolers\\_and\\_walk-in\\_freezers@EE.Doe.Gov](mailto:walk-in_coolers_and_walk-in_freezers@EE.Doe.Gov).

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue SW., Washington, DC, 20585-0121. Telephone: (202) 586-8145. Email: [Michael.Kido@hq.doe.gov](mailto:Michael.Kido@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** On June 3, 2014, DOE published a final rule for walk-in coolers and walk-in freezers in which DOE amended the energy conservation standards for certain walk-in cooler and walk-in freezer components. Those standards were determined by DOE to be technologically feasible and economically justified and would result in the significant conservation of energy. The Energy Conservation and Policy Act of 1975 (42 U.S.C.6291, *et seq*; "EPCA"), Public Law 94-163, requires that the Attorney General make a determination and analysis of the impact, if any, of any lessening of competition likely to result from a proposed standard, within 60 days of publication. (42 U.S.C. 6295(o)(2)(B)(ii)) EPCA also requires that DOE publish the determination and analysis in the *Federal Register*. *Id.*

DOE received the determination in response to the September 11, 2013 NOPR from the Attorney General and the U.S. Department of Justice on November 13, 2013. Accordingly, DOE is publishing that determination in today's notice.

Issued in Washington, DC, on February 12, 2015.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

U.S. DEPARTMENT OF JUSTICE

Antitrust Division  
WILLIAM J. BAER  
Assistant Attorney General  
Main Justice Building  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001  
(202) 514-2401 I (202) 616-2645 (Fax)  
November 12, 2013

Eric J. Fygi  
Deputy General Counsel Department of Energy  
Washington, D.C. 20585  
Re: Walk In Coolers & Freezers Energy Conservation Standards Dear Deputy General Counsel Fygi:

I am responding to your September 10, 2013 letter seeking the views of the Attorney General about the potential impact on competition of proposed energy conservation standards for walk-in coolers and refrigerators. Your request was submitted under Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended (ECPA), 42 U.S.C. 6295(o)(2)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation

standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR § 0.40(g).

In conducting its analysis the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice, by placing certain manufacturers at an unjustified competitive disadvantage, or by inducing avoidable inefficiencies in production or distribution of particular products. A lessening of competition could result in higher prices to manufacturers and consumers, and perhaps thwart the intent of the revised standards by inducing substitution to less efficient products.

We have reviewed the proposed standards contained in the Notice of Proposed Rulemaking (78 FR 55781, September 11, 2013) (NOPR). We have also reviewed supplementary information submitted to the Attorney General by the Department of Energy, including a transcript of the public meeting held on the proposed standards on October 9, 2013. Based on this review, our conclusion is that the proposed energy conservation standards for walk-in coolers and freezers are unlikely to have a significant adverse impact on competition.

Sincerely,

William J. Baer

Enclosure

[FR Doc. 2015-03557 Filed 2-23-15; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2014-0521; Directorate Identifier 2014-NE-11-AD; Amendment 39-18104; AD 2015-04-02]

RIN 2120-AA64

#### Airworthiness Directives; CFM International S.A. Turbofan Engines

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all CFM International S.A. (CFM) CFM56-7B series turbofan engines. This AD was prompted by a dual engine thrust instability event that resulted in the overspeed and in-flight shutdown (IFSD) of one engine. This AD requires modification of the engine by removing

full authority digital engine control (FADEC) software, version 7.B.V4 or earlier, installed in the electronic engine controls (EECs) on CFM56-7B engines. We are issuing this AD to prevent a thrust instability event, which could lead to overspeed and IFSD of one or more engines, loss of thrust control, damage to the engine, and damage to the airplane.

**DATES:** This AD is effective March 31, 2015.

**ADDRESSES:** For service information identified in this AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: 877-432-3272; fax: 877-432-3329; email: [geae.aoc@ge.com](mailto:geae.aoc@ge.com). You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0521.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0521; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Kyle Gustafson, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781-238-7183; fax: 781-238-7199; email: [kyle.gustafson@faa.gov](mailto:kyle.gustafson@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all CFM CFM56-7B series turbofan engines. The NPRM published in the **Federal Register** on October 2, 2014 (79 FR 59467). The NPRM was prompted by reports of dual-engine thrust instability events on CFM56-7B turbofan engines that resulted in

overspeed and IFSD of one engine. These resulted from water-borne contamination of the fuel being supplied to the engine which had an adverse effect on the response of the fuel metering valve (FMV) in the hydro-mechanical unit (HMU). CFM has modified its FADEC software to compensate for compromised fuel within the HMU and improved the response of the FMV, thereby mitigating these thrust instability events. The NPRM proposed to require modification of the engine by removing FADEC software, version 7.B.V4 or earlier, installed in the EECs on CFM56-7B engines. We are issuing this AD to prevent a thrust instability event, which could lead to overspeed and IFSD of one or more engines, loss of thrust control, damage to the engine, and damage to the airplane.

#### Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 59467, October 2, 2014) and the FAA's response to each comment.

#### Request To Change Emphasis From Software Removal to Software Installation

Delta Air Lines (DAL) and American Air Lines (AAL) requested that we change wording in the AD to emphasize installation of an eligible software standard rather than removal of the ineligible software standard. They suggested that we add this sentence to compliance paragraph (e): "Within 6 months of the effective date of this AD, modify the engine by installing FADEC software version 7.B.W, released by CFM Service Bulletins 73-0203 and 73-0204, or later approved software versions." DAL and AAL state that the Boeing 737NG Aircraft Maintenance Manual does not contain a removal step but rather guides how to overwrite previous software with eligible software.

We disagree. The purpose of this AD is to require removal of software standard 7.B.V4, or earlier, to correct the unsafe condition. Overwriting a previously installed software standard with a software standard eligible for installation is an acceptable method for removing an affected software standard. We did not change this AD.

#### Request To Require Use of Software EEC Software Standard 7.B.W or Later

DAL and AAL requested that we revise paragraph (h)(2) of FAA AD 2012-05-02 (77 FR 20511, April 5, 2012) ("AD 2012-05-02") to state that EEC software standard 7.B.W or later is

required. AD 2012-05-02 requires inspection and modification to the Boeing 737NG thrust reversers, and also requires, in paragraph (h)(2), installation of software standard 7.B.R3 on affected engines. Since AD 2012-05-02 was issued, new versions of software have been released, requiring alternative methods of compliance (AMOCs) to allow installation of versions later than software standard 7.B.R3. The requested change to AD 2012-05-02 would bring AD 2012-05-02 and this AD into agreement on the required airplane configuration.

We disagree. The current version of the software standard, 7.B.W, also addresses the thrust reverser unsafe condition and is approved as an AMOC for AD 2012-05-02. We did not change this AD.

#### Request To Change Description of the Unsafe Condition

The Boeing Company (Boeing) and CFM requested that we change the wording of the unsafe condition to "We are proposing this AD to mitigate characteristics of a thrust instability event; without mitigation, thrust instability events could potentially lead to engine overspeed and IFSD of one or more engines, loss of thrust control, and damage to the airplane." The commenters state that the EEC cannot prevent the occurrence of the events, but it can effectively mitigate the characteristics of the events.

We disagree. While the work to prevent the root cause of fuel contamination continues, the purpose of the FADEC software and this AD is to prevent the events described in the unsafe condition. We did not change this AD.

#### Request To Change Wording in the Description Paragraph

CFM and Boeing requested that we change the wording of two sentences in the Description paragraph to "These resulted from water-borne contamination of the fuel being supplied to the engine which had an adverse effect on the response of the FMV in the HMU. CFM has modified its FADEC software to compensate for compromised fuel within the HMU and improve the response of the fuel control valve, thereby mitigating these thrust instability events."

We agree. We changed the wording of the two sentences in the Description paragraph to be more correct and accurate.

### Request To Clarify a Sentence in the Relevant Service Information Paragraph

Boeing requested, for clarity, that in the Relevant Service Information paragraph of the preamble we add the words “post 7.B.V4” to describe the FADEC software. Boeing requested that the changed sentence read: “The SBs describe the procedures for the introduction of new FADEC software, post 7.B.V4, for the EECs.”

We disagree. The information in this AD provides the necessary information for compliance. No additional clarification is required. Furthermore, the Relevant Service Information paragraph, which appeared in the preamble of the NPRM (79 FR 59467, October 2, 2014), does not appear in this AD. We did not change this AD.

### Request That We Correct Our References to the FADEC Software Standard

CFM requested that we change all references to the software standard throughout this AD from “7BV4” to “7.B.V4” because that is the correct way to reference the software standard.

We agree. We changed all references to the software standard throughout this AD to the correct nomenclature.

### Request To Add a Table Specifying the Software Versions To Remove

Boeing requested that for clarity we include in this AD a table that would show the software versions, by part number, that should be removed as a result of this AD.

We disagree. The information in this AD provides the necessary information for compliance. No additional clarification is required. We did not change this AD.

### Additional Changes

In our review of the NPRM, we found that we failed to include the prohibition against operating any aircraft configured with one engine with FADEC software version 7.B.V4 or earlier, installed, and the other engine with an eligible FADEC software version installed. This prohibition is in SB CFM Service Bulletin (SB) No. CFM56-7B S/B 73-0203, dated June 9, 2014 and CFM No. SB CFM56-7B S/B 73-0204, dated June 9, 2014. We added the prohibition to this AD.

### Agreement With the Proposed AD

One anonymous commenter expressed agreement with this AD.

### Conclusion

We reviewed the relevant data, considered the comments received, and

determined that air safety and the public interest require adopting this AD with the changes described previously. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 59467, October 2, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 59467, October 2, 2014).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

### Costs of Compliance

We estimate that this AD would affect about 2,921 engines installed on airplanes of U.S. registry. We also estimate that it would take about 1 hour per engine to comply with this AD. The average labor rate is \$85 per hour. Parts cost is zero. Based on these figures, we estimate the cost of this AD on U.S. operators to be \$248,285.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,

(2) Is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2015-04-02 CFM International S.A.:**  
Amendment 39-18104; Docket No. FAA-2014-0521; Directorate Identifier 2014-NE-11-AD.

#### (a) Effective Date

This AD is effective March 31, 2015.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to all CFM International S.A. (CFM) CFM56-7B series turbofan engines.

#### (d) Unsafe Condition

This AD was prompted by a dual engine thrust instability event that resulted in the overspeed and in-flight shutdown (IFSD) of one engine. We are issuing this AD to prevent a thrust instability event, which could lead to overspeed and IFSD of one or more engines, loss of thrust control, damage to the engine, and damage to the airplane.

#### (e) Compliance

(1) Comply with this AD within the compliance times specified, unless already done.

(2) Within 6 months after the effective date of this AD, modify the engine by removing full authority digital engine control (FADEC) software, version 7.B.V4 or earlier, installed in the electronic engine control (EEC).

(3) Do not return to service any aircraft configured with one engine with FADEC software, version 7.B.V4 or earlier, installed, and the other engine with an eligible FADEC software version, installed.

**(f) Alternative Methods of Compliance (AMOCs)**

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: [ANE-AD-AMOC@faa.gov](mailto:ANE-AD-AMOC@faa.gov).

**(g) Related Information**

(1) For more information about this AD, contact Kyle Gustafson, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781-238-7183; fax: 781-238-7199; email: [kyle.gustafson@faa.gov](mailto:kyle.gustafson@faa.gov).

(2) CFM Service Bulletin (SB) No. CFM56-7B S/B 73-0203, dated June 9, 2014, and CFM No. SB CFM56-7B S/B 73-0204, dated June 9, 2014, which are not incorporated by reference in this AD, can be obtained from CFM using the contact information in paragraph (g)(3) of this AD.

(3) For service information identified in this AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: 877-432-3272; fax: 877-432-3329; email: [geae.aoc@ge.com](mailto:geae.aoc@ge.com).

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238-7125.

**(h) Material Incorporated by Reference**

None.

Issued in Burlington, Massachusetts, on February 10, 2015.

**Ann C. Mollica,**

*Acting Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2015-03582 Filed 2-23-15; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. FAA-2015-0365; Directorate Identifier 2014-SW-049-AD; Amendment 39-18106; AD 2015-04-04]**

**RIN 2120-AA64**

**Airworthiness Directives; Bell Helicopter Textron Inc. Helicopters**

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

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

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Bell Helicopter Textron Inc. (Bell) Model 412 and 412EP helicopters with certain static inverters (inverters) installed. This AD requires revising the Rotorcraft Flight Manual (RFM) and installing a

placard in full view of the pilot to limit flight to visual flight rules (VFR) only and prohibit night operations. This AD is prompted by failures of certain inverters, most of which resulted in smoke in the cockpit. The actions specified by this AD are intended to restrict flight to VFR only and prohibit night operations to allow safe operation in the event of failure of an affected inverter. This failure would increase pilot workload during instrument flight rules (IFR) and could result in loss of certain pilot information displays and subsequent loss of control of the helicopter.

**DATES:** This AD becomes effective March 11, 2015.

We must receive comments on this AD by April 27, 2015.

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

- **Federal eRulemaking Docket:** Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.
- **Fax:** 202-493-2251.
- **Mail:** Send comments to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

- **Hand Delivery:** Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

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

For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280-3391; fax (817) 280-6466; or at <http://www.bellcustomer.com/files/>. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**FOR FURTHER INFORMATION CONTACT:** Ife Ogunleye, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas

76137; telephone (817) 222-5927; email [7-AVS-ASW-170@faa.gov](mailto:7-AVS-ASW-170@faa.gov).

**SUPPLEMENTARY INFORMATION:****Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

**Discussion**

We are adopting a new AD for Bell Model 412 and 412EP helicopters with an inverter part number (P/N) 412-375-079-101 or P/N 412-375-079-103 with a serial number 29145 or larger. This AD limits operations to VFR and prohibits night operations by adding a restriction to the RFM and installing a placard in full view of the pilots. This AD is prompted by at least 30 failures of certain inverters; most have resulted in smoke in the cockpit. The root cause of the failures is still under investigation by Bell and Avionics Instruments LLC, the manufacturer of the inverters. The consequence of one failed inverter has the potential of allowing smoke in the cockpit, making it difficult to find a safe landing site at night or in instrument meteorological conditions. If both inverters fail, the pilot will lose primary flight and navigation displays, alternating current powered engine and transmission indicators, and autopilot. The RFM emergency procedure for dual inverter failure is to land as soon as practicable or fly VFR. The RFM emergency procedure for smoke in the cabin is to land as soon as possible. Until a new design is available, restricting flight operations to VFR and daytime increases the likelihood of a prompt safe landing.

### FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

### Related Service Information

Bell issued Alert Service Bulletin 412-13-156, dated April 25, 2013 (ASB), which specifies inspecting part-numbered 412-375-079-101 inverters and either repairing each inverter or replacing it with inverter P/N 412-375-079-103 to prevent failure. This ASB does not correct the unsafe condition identified in this AD. The specific cause of the inverter failures has not been verified, and since Bell issued the ASB, the failures have continued.

### AD Requirements

This AD requires, within 5 hours time-in-service, limiting operations to VFR and prohibiting night operations by revising the Limitations section of the RFM and by installing a placard in the cockpit in full view of the pilots.

### Interim Action

We consider this AD to be an interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

### Costs of Compliance

We estimate that this AD will affect 88 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are \$85 per work hour. We estimate a minimal amount of time to revise the RFM and to install a placard. The required parts are \$10 for a placard. Based on these requirements, the cost will be \$10 per helicopter and \$880 for the U.S. fleet.

### FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments before adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment before adopting this rule because the required corrective actions must be done within 5 hours time-in-service.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and

opportunity for public comment before issuing this AD are impracticable and contrary to the public interest and that good cause exists for making this amendment effective in less than 30 days.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

For the reasons discussed, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

### Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2015-04-04 Bell Helicopter Textron Inc.:**  
Amendment 39-18106; Docket No. FAA-2015-0365; Directorate Identifier 2014-SW-049-AD.

#### (a) Applicability

This AD applies to Model 412 and 412EP helicopters with a static inverter (inverter) part number (P/N) 412-375-079-101 or 412-375-079-103 with a serial number 29145 or larger installed, certificated in any category.

#### (b) Unsafe Condition

This AD defines the unsafe condition as failure of an inverter(s) under instrument meteorological conditions or night flight. This condition could result in smoke in the cockpit, increased pilot workload due to the loss of primary flight and navigation displays, alternating current powered engine and transmission indicators, and autopilot, and subsequent loss of control of the helicopter.

#### (c) Effective Date

This AD becomes effective March 11, 2015.

#### (d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

#### (e) Required Actions

Within 5 hours time-in-service:

- (1) Add the statement "Flight is restricted to VFR, and night operations are prohibited" to the Limitations section of the Rotorcraft Flight Manual by making pen and ink changes or by inserting a copy of this AD.
- (2) Install a placard stating "LIMITED TO VFR ONLY; NIGHT OPERATIONS PROHIBITED" on the instrument panel in full view of the pilots.

#### (f) Special Flight Permits

Special flight permits are prohibited.

#### (g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Ife Ogunleye, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222-5927; email 7-AVS-ASW-170@faa.gov.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that

you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(h) Additional Information**

Bell Helicopter Alert Service Bulletin 412-13-156, dated April 25, 2013, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280-3391; fax (817) 280-6466; or at <http://www.bellcustomer.com/files/>.

**(i) Subject**

Joint Aircraft Service Component (JASC) Code: 2422 AC Inverter.

Issued in Fort Worth, Texas, on February 10, 2015.

**Lance T. Gant,**

*Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2015-03585 Filed 2-23-15; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 40**

[Docket No. RM14-12-000; Order No. 804]

**Demand and Energy Data Reliability Standard**

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

**ACTION:** Final rule.

**SUMMARY:** The Commission approves Demand and Energy Data Reliability Standard MOD-031-1 developed by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization responsible for developing and enforcing mandatory Reliability Standards. In addition, the Commission directs NERC to develop a clarifying modification to the Reliability Standard.

**DATES:** This rule will become effective April 27, 2015.

**FOR FURTHER INFORMATION CONTACT:**

Susan Morris (Technical Information), Office of Electric Reliability, Division of Reliability Standards and Security, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502-6803, [Susan.Morris@ferc.gov](mailto:Susan.Morris@ferc.gov)

Robert T. Stroh (Legal Information), Office of the General Counsel, Federal

Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502-8473, [Robert.Stroh@ferc.gov](mailto:Robert.Stroh@ferc.gov).

**SUPPLEMENTARY INFORMATION:**

1. Pursuant to section 215(d) of the Federal Power Act (FPA),<sup>1</sup> the Commission approves Reliability Standard MOD-031-1 (Demand and Energy Data) developed by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). Reliability Standard MOD-031-1 provides authority for planners and operators to collect demand, energy and related data to support reliability studies and assessments. In addition, the Commission approves NERC's proposed definitions for the terms Demand Side Management and Total Internal Demand. The Commission also approves the associated implementation plan, violation risk factors and violation severity levels, and NERC's proposed retirement of the currently-effective Reliability Standards MOD-016-1.1, MOD-017-0.1, MOD-018-0, MOD-019-0.1, and MOD-021-1 (Existing MOD C Standards).

2. Further, pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to (1) develop a modification to Reliability Standard MOD-031-1 to clarify certain obligations to provide data to the Regional Entity and (2) consider the compliance obligations of an applicable entity upon receipt of a data request that seeks confidential information.

**I. Background**

3. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards are enforced by the ERO, subject to Commission oversight, or by the Commission independently. In 2006, NERC submitted the initial version of Reliability Standards MOD-016-1.1, MOD-017-0.1, MOD-018-0, MOD-019-0.1, MOD-020-0, and MOD-021-1. The Existing MOD C Standards were designed to help ensure that historical and forecasted demand and energy data are available for past event validation and future system assessment. In particular, the Existing MOD C Standards, along with Reliability Standard MOD-020-0, require the collection of actual and forecast demand data necessary to analyze the resource needs to serve peak demand while

maintaining a sufficient margin to address operating events. In Order No. 693, the Commission approved the Existing MOD C Standards and Reliability Standard MOD-020-0.<sup>2</sup> In addition, the Commission directed NERC to develop certain modifications to the standards.

**II. NERC Petition and NOPR**

4. In its petition, NERC stated that Reliability Standard MOD-031-1 will provide planners and operators access to actual and forecast demand and energy data, as well as other related information, needed to perform resource adequacy studies.<sup>3</sup> NERC explained that the proposed Reliability Standard also supports the continued development of the reliability assessments prepared by NERC. NERC stated that the proposed Reliability Standard improves the Existing MOD C Standards by: (1) Streamlining them to clarify data collection requirements; (2) including transmission planners as applicable entities that must report demand and energy data; (3) requiring applicable entities to report weather normalized annual peak hour actual demand data from the previous year to allow for meaningful comparison with forecasted values; and (4) requiring applicable entities to provide an explanation of how their forecasts compare to actual prior year data.<sup>4</sup>

5. Reliability Standard MOD-031-1 contains four requirements. Requirement R1 provides that each planning coordinator or balancing authority that identifies a need for the collection of demand and energy data must develop and issue a data request for such data to the relevant entities in its area. The requirement mandates that the data request identify: (i) The entities responsible for providing the data; (ii) the data to be provided by each entity; and (iii) the schedule for providing the data. Requirement R2 obligates the entities identified in a Requirement R1 data request to provide the requested data to their planning coordinator or balancing authority. Requirement R3 requires that the planning coordinator or the balancing authority provide the data collected under Requirement R2 to their Regional Entity, if requested, to

<sup>2</sup> *Mandatory Reliability Standards for the Bulk Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, at PP 1223, 1235, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

<sup>3</sup> NERC Petition at 3. The proposed MOD Reliability Standard is not attached to the Final Rule. The complete text of the Reliability Standard is available on the Commission's eLibrary document retrieval system in Docket No. RM14-12 and is posted on the ERO's Web site, *available at: http://www.nerc.com*.

<sup>4</sup> NERC Petition at 4.

<sup>1</sup> 16 U.S.C. 824o(d) (2012).

facilitate NERC's development of reliability assessments. Requirement R4 requires entities to share their demand and energy data with any applicable entity that demonstrates a reliability need for such data.<sup>5</sup>

6. On September 18, 2014, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve Reliability Standard MOD-031-1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission also requested comments on the collection of demand and energy data. Specifically, the Commission sought comments on: (1) The Commission's understanding that while a planning coordinator or balancing authority may collect demand and energy forecast data under a tariff or other arrangement, the planning coordinator or balancing authority always retains the option to seek the necessary data through a Requirement R1 data request if, for example, the data are not forthcoming through other means; and (2) whether a planning coordinator or balancing authority that receives data through alternative mechanisms remains obligated to provide such data (*i.e.*, within the scope of Requirement R1) to a Regional Entity upon request, as set forth in Requirement R3.

#### Comments

7. Comments on the NOPR were submitted by NERC, Edison Electric Institute (EEI), ISO New England, Inc. (ISO New England), International Transmission Company d/b/a ITC Transmission, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC (collectively, "ITC Companies"), PacifiCorp, and Idaho Power Company (Idaho Power).

8. NERC, EEI, ISO New England support the Commission's proposed approval of MOD-031-1, and ITC Companies "does not object" to the standard. NERC and other commenters provide responses to the Commission's questions regarding the collection of demand and energy data, as discussed below.

9. NERC, EEI, Idaho Power, and ISO New England confirm the Commission's understanding that the planning coordinator or balancing authority retains the option to seek the necessary data through a Requirement R1 data request. NERC states that the Reliability Standard provides planning coordinators and balancing authorities the authority to issue data requests to

compel applicable entities to provide the demand and energy data necessary to conduct reliability assessments. According to NERC, the Reliability Standard does not require planning coordinators and balancing authorities to issue such data requests if they have alternative means of obtaining or developing that data but planning coordinators and balancing authorities may always use the authority provided by the Reliability Standard as a backstop to ensure they obtain complete and accurate data.

10. With respect to the issue of whether a planning coordinator or balancing authority that receives data through alternative mechanisms remains obligated to provide such data to a Regional Entity upon request, NERC states that the intent of Requirement R3 was to require all planning coordinators and balancing authorities to provide the necessary demand and energy data to their respective Regional Entities to support the ERO development of seasonal and long-term reliability assessments. NERC commits to modifying the language of Requirement R3 in its standard development process to clarify that planning coordinators and balancing authorities must provide their demand and energy data to their Regional Entity, upon request, whether that data is collected pursuant to the proposed Reliability Standard or through alternative arrangements.

11. With regard to the Commission's question about the obligations of a planning coordinator or balancing authority to share data gathered or obtained through alternative mechanisms, EEI comments that there is no obligation to require a planning coordinator or balancing authority to share such data in a similar manner as required by Requirement R3. EEI adds that it is not aware of any reason that might motivate independent system operators (ISOs) or regional transmission organizations (RTOs) (in their role as planning coordinators or balancing authorities) to withhold such information from the Regional Entity. PacifiCorp agrees with EEI on this issue and favors a finding that Requirement R3 should not apply if the planning coordinator or balancing authority receives data through alternative means.

12. In contrast, Idaho Power and ISO New England assert that a planning coordinator or balancing authority that receives data within the scope of Requirement R1 through alternative mechanisms (as opposed to a data request) remains obligated to provide the data to a Regional Entity upon request pursuant to Requirement R3.

13. EEI also requests that the Commission clarify potential conflicts between a transmission provider's obligation to provide data under Reliability Standard MOD-031-1 and its confidentiality obligations under the Open Access Transmission Tariff (OATT) or other confidentiality or nondisclosure restrictions. ITC Companies raises a concern with the inclusion of transmission planners as entities from whom the types of data specified may be requested because, according to ITC Companies, many transmission planners have delegated the collection of data to the ISO or RTO in which they are located.

#### III. Discussion

14. Pursuant to section 215(d)(2) of the FPA, the Commission approves Reliability Standard MOD-031-1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We also approve the new and modified glossary definitions, implementation plan, associated violation risk factors and violation severity levels as well as the retirement of the Existing MOD C Standards. Reliability Standard MOD-031-1 should continue to provide planners and operators access to complete and accurate demand and energy data to allow such entities to conduct their own resource adequacy analyses to serve peak demand. As noted above, NERC, EEI, and ISO New England support approval of MOD-031-1, and no commenters oppose approval. ITC Companies "does not object" to the standard and "concurs with the Commission that MOD-031-1 will meaningfully enhance the ability of transmission planners and operators to conduct resource adequacy analyses and plan for peak load conditions."<sup>6</sup>

15. We also find that the Reliability Standard should provide for consistent documentation and information sharing practices for demand and energy data, and promotes efficient planning practices across the industry and supports the identification of needed system reinforcements. Further, the Commission finds that Reliability Standard MOD-031-1 improves the Existing MOD C Standards by providing applicable entities the authority to collect demand and energy data, and related information, to support reliability assessments and also includes transmission planners as applicable entities that must report demand and energy data.

16. Further, as discussed below, we direct NERC to (1) develop a

<sup>5</sup> *Id.* at 5.

<sup>6</sup> ITC Comments at 2.

modification to Reliability Standard MOD-031-1 to clarify certain obligations to provide data to the Regional Entity and (2) consider the compliance obligations of an applicable entity upon receipt of a data request that seeks confidential information.

#### A. Demand and Energy Data Issues Raised in the NOPR

17. As discussed above, the Commission sought comment in the NOPR on several questions in connection with the collection of demand and energy data. With regard to the responsive comments on the NOPR question regarding the collection of data through mechanisms other than data requests, the Commission accepts the explanation provided by NERC and other commenters that, while a planning coordinator or balancing authority may collect demand and energy forecast data under a tariff or other arrangement, the planning coordinator or balancing authority always retains the option to seek the necessary data through a Requirement R1 data request if, for example, the data are not forthcoming through other means.

18. Further, the Commission raised a concern in the NOPR regarding whether a planning coordinator or balancing authority that receives data “through alternative mechanisms” remains obligated to provide such data (*i.e.*, within the scope of Requirement R1) to a Regional Entity upon request, as set forth in Requirement R3. We accept NERC’s explanation that the “intent of Requirement R3 was to require all planning coordinators and balancing authorities to provide the necessary demand and energy data to their respective Regional Entities to support the [ERO]’s development of seasonal and long-term reliability assessments,” although “a strict reading” of Requirement R3 “indicates that it applies only to data collected pursuant to a data request issued under this Reliability Standard.”<sup>7</sup> NERC has the statutory responsibility to conduct periodic assessments of the reliability and adequacy of the Bulk-Power System, and we believe that it is incumbent on users, owners and operators subject to compliance with section 215 of the FPA to provide the necessary data to support such assessments.<sup>8</sup> Accordingly, pursuant to section 215(d)(5) of the FPA and consistent with NERC’s comments,<sup>9</sup> we direct NERC to develop a modification

to MOD-031-1 through the standards development process to clarify that planning coordinators and balancing authorities must provide demand and energy data upon request of a Regional Entity, as necessary to support NERC’s development of seasonal and long-term reliability assessments.

#### B. Other Issues

19. EEI seeks Commission clarification of a “potential conflict” between a transmission provider’s obligation to provide data under MOD-031-1 and the transmission provider’s confidentiality obligations under an OATT or other confidentiality restrictions.<sup>10</sup> Under MOD-031-1, Requirement R2, an applicable entity must provide data requested by its planning coordinator or balancing authority in accordance with the Requirement R1 data request provision. EEI notes that, under Requirement R4, an entity has 45 days to respond to a written request for data. Further, under Requirement 4.1, if an entity does not provide requested data because, *inter alia*, “providing the data would conflict with the Applicable Entity’s confidentiality, regulatory or security requirements, the Applicable Entity shall, within 30 calendar days of the written request, provide a written response to the requesting entity specifying the data that is not being provided and on what basis.” According to EEI, it is unclear “at what point a transmission provider’s obligation to ‘cooperate’ with the other Party in the formation of a confidentiality agreement or protective order ends, and its obligation as an Applicable Entity to disclose the requested information under either Requirements R1 or R4 begins.”<sup>11</sup>

20. Requirement R1 specifies the planning coordinator or balancing authority shall issue a “data request to applicable entities in its area.” Applicable entities that are subject to providing data pursuant to Requirement R2 are transmission planners, balancing authorities, load-serving entities, and distribution providers. The transmission providers discussed by EEI may, in fact, be registered as one or more of the NERC functional entities that make up the applicable entities list in MOD-031-1. Requirement R4 includes provisions for an applicable entity to follow if a conflict arises. On this basis, the Reliability Standard appears to be clear. However, EEI’s concern that MOD-031-

1 is not clear regarding the compliance obligations of an applicable entity when required to provide data to a balancing authority or planning coordinator pursuant to a data request under the standard may have merit. Further, it may be possible in some circumstances, depending on the terms of the confidentiality provision at play, to provide data pursuant to a non-disclosure agreement. Therefore, rather than attempting to provide the clarification requested by EEI, the Commission directs NERC to consider EEI’s concern regarding the compliance obligations of an applicable entity upon receipt of a data request that seeks confidential information in the standard development process when it addresses the directive to clarify that planning coordinators and balancing authorities must provide demand and energy data upon request of a Regional Entity.<sup>12</sup>

21. ITC Companies raises a concern with the inclusion of transmission planners as listed entities from whom the types of data specified may be requested because, according to ITC Companies, many transmission planners have delegated the collection of data to the ISO or RTO in which they are located. ITC Companies requests that the Commission recognize that agreements governing the reporting of demand and energy data such as those existing between ITC’s operating subsidiaries and the ISOs/RTOs in which each operates are common, and thus provide that a transmission planner having such an arrangement with an ISO/RTO will be in compliance with data requests it receives under the Requirements R1 and R4. While the language of particular agreements is beyond the scope of the immediate proceeding, we agree with ITC Companies that Requirement R1 provides the flexibility to collect energy data through alternative mechanisms.<sup>13</sup>

#### IV. Information Collection Statement

22. The Paperwork Reduction Act (PRA)<sup>14</sup> requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements imposed by agency rules.<sup>15</sup> Upon approval of a collection(s) of information, OMB will

<sup>7</sup> NERC Comments at 2–3. See also EEI Comments at 3.

<sup>8</sup> 16 U.S.C. 824o(g).

<sup>9</sup> See NERC Comments at 3.

<sup>10</sup> See EEI Comments at 3–4 (citing Article 22.1.10 of the *pro forma* large generation interconnection agreement).

<sup>11</sup> EEI Comments at 5.

<sup>12</sup> See Order No. 693 FERC Stats. & Regs. ¶ 31,242, at P 188.

<sup>13</sup> See NERC Petition at 22, 23.

<sup>14</sup> 44 U.S.C. 3501–3520.

<sup>15</sup> See 5 CFR 1320.10.



assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

23. Through issuance of this Final Rule, the Commission approves Reliability Standard MOD-031-1. As stated above, the Existing MOD C Standards were approved by the Commission in Order No. 693. All information collection estimates associated with the collection of demand and energy data and subsequent retention were assessed in Order No. 693 and will not be repeated here. The Reliability Standard expands the actual data to be submitted in two areas: (1) Weather normalized annual peak hour actual demand for the prior calendar year if this demand varies due

to weather-related conditions (e.g., temperature, humidity or wind speed); and (2) summaries detailed in Requirement R1, Subparts 1.5.4 and 1.5.5. The additional data and summaries will increase reporting and preparation time for some applicable entities. Most entities already normalize their actual demand data based on weather. However, some entities may have a one-time cost of determining the method to “weather normalize” the actual demand data. Accordingly, the information collection costs will consist of an annual cost for all applicable entities and, for a small percentage, additional costs will occur during the first year of implementation.

*Public Reporting Burden:* Reliability Standard MOD-031-1 requires each “Applicable Entity” to provide the data requested by its planning coordinator or balancing authority in accordance with the data request issued pursuant to

Requirement R1.<sup>16</sup> Our estimate below regarding the number of respondents is based on the NERC Compliance Registry as of July 31, 2014. According to the NERC Compliance Registry, NERC has registered 478 distribution providers, 469 load-serving entities, 179 transmission planners and 107 balancing authorities. However, under NERC’s compliance registration program, entities may be registered for multiple functions, so these numbers incorporate some double counting. The total number of unique entities that may be identified as a data provider (e.g. applicable entity) in accordance with Reliability Standard MOD-031-1 will be approximately 561 entities registered in the United States as a distribution provider, load-serving entity, transmission planner and/or balancing authority.<sup>17</sup> The Commission estimates the annual reporting burden and cost as follows:

RM14-12-000 FINAL RULE

	Number and type of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2)=(3)	Average burden & cost per response (4)	Total annual burden hours & total annual cost (3)*(4)=(5)	Cost per respondent <sup>18</sup> (5)+(1)
(One-time) Determine method to weather normalize annual peak hour actual demand.	28 <sup>19</sup> (DP, LSE, TP and/or BA) <sup>20</sup> .	1	28	240 hrs. & \$14,309 ..	6,720 hours & \$400,646.	\$14,309
(On-going) Develop summary in accordance w/Requirement R1, Subparts 1.5.4 and 1.5.5.	561 (DP, LSE, TP and/or BA).	1	561	8 hrs. & \$477 .....	4,488 hours & \$267,575.	477
Total .....	.....	.....	589	.....	11,208 hours & \$668,221.	.....

*Title:* FERC-725L, Mandatory Reliability Standards for the Bulk-Power System: MOD Reliability Standards.

*Action:* Final rule.

*OMB Control No:* 1902-0261.

*Respondents:* Businesses or other for-profit institutions; not-for-profit institutions.

*Frequency of Responses:* One-time and ongoing.

*Necessity of the Information:* Reliability Standard MOD-031-1

implements the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation’s Bulk-Power System. Specifically, the purpose of the Reliability Standard is to provide authority for applicable entities to collect demand, energy and related data to support reliability studies and assessments and to enumerate the

responsibilities and obligations of requestors and respondents of that data.

*Internal Review:* The Commission has reviewed the requirements pertaining to the Reliability Standard for the Bulk-Power System and determined that the approved requirements are necessary to meet the statutory provisions of the Energy Policy Act of 2005. These requirements conform to the Commission’s plan for efficient

<sup>16</sup> Requirement R1, Subpart 1.1 refers to “Applicable Entities” as the list of transmission planners, balancing authorities, load-serving entities and distribution providers that are required to provide the data.

<sup>17</sup> This estimate assumes all of the unique entities will be identified to provide demand and energy data.

<sup>18</sup> The estimated hourly costs (salary plus benefits) are based on Bureau of Labor Statistics (BLS) information (available at [http://bls.gov/oes/current/naics3\\_221000.htm#17-0000](http://bls.gov/oes/current/naics3_221000.htm#17-0000)) for an electrical engineer (\$59.62/hour).

<sup>19</sup> This value represents the number of entities that have not already determined a method to weather normalize annual peak actual demand data. We estimate approximately 5 percent of the applicable entities fall into this category.

<sup>20</sup> DP = distribution provider, LSE = load-serving entity, TP = transmission planner and BA = balancing authority, are functions the applicable entities perform in conjunction or individually. We estimate the total number of unique entities performing one or more of these functions to be 561.

<sup>21</sup> 5 U.S.C. 601-612.

information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: [DataClearance@ferc.gov](mailto:DataClearance@ferc.gov), Phone: (202) 502-8663, fax: (202) 273-0873]. Comments on the requirements of this rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Comments submitted to OMB should refer to FERC-725L and OMB Control No. 1902-0261.

#### V. Regulatory Flexibility Act Certification

24. The Regulatory Flexibility Act of 1980 (RFA)<sup>21</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.

25. The Small Business Administration (SBA) revised its size standard (effective January 22, 2014) for electric utilities from a standard based on megawatt hours to a standard based on the number of employees, including affiliates.<sup>22</sup> Under SBA's new size standards, transmission owners and transmission operators likely come under the following category and associated size threshold: Electric bulk power transmission and control, at 500 employees.<sup>23</sup> The Reliability Standard applies to 561 entities. Comparison of the applicable entities with the Commission's small business data indicates that approximately 249 are small entities.<sup>24</sup> Of these, the

Commission estimates that approximately five percent, or twelve of these small entities expect to be affected by the new requirements of the proposed Reliability Standard. The Commission estimates that the small entities that will be affected by Reliability Standard MOD-031-1 will incur one-time compliance costs ranging up to \$14,309 (*i.e.* the cost of determining the method of weather normalizing annual peak hour actual demand), plus the annual development of summary narratives in accordance with Requirement R1, Subparts 1.5.4 and 1.5.5, resulting in costs of \$477.

26. Accordingly, the Commission certifies that the Reliability Standard will not have a significant economic impact on a substantial number of small entities.

#### VI. Environmental Analysis

27. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>25</sup> The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.<sup>26</sup> The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

#### VII. Document Availability

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

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

<sup>25</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

<sup>26</sup> 18 CFR 380.4(a)(2)(ii).

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

#### VIII. Effective Date and Congressional Notification

31. These regulations are effective April 27, 2015. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Issued: February 19, 2015.

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

*Deputy Secretary.*

[FR Doc. 2015-03740 Filed 2-23-15; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 890

[Docket No. FDA-2014-N-1903]

#### Medical Devices; Physical Medicine Devices; Classification of the Powered Exoskeleton

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

**ACTION:** Final order.

**SUMMARY:** The Food and Drug Administration (FDA) is classifying the powered exoskeleton into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the powered exoskeleton's classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

**DATES:** This order is effective March 26, 2015. The classification was applicable on June 26, 2014.

**FOR FURTHER INFORMATION CONTACT:** Michael Hoffmann, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1434, Silver Spring, MD 20993-0002, 301-796-6476, [Michael.Hoffmann@fda.hhs.gov](mailto:Michael.Hoffmann@fda.hhs.gov).

<sup>21</sup> 5 U.S.C. 601-612.

<sup>22</sup> SBA Final Rule on "Small Business Size Standards: Utilities," 78 FR 77,343 (Dec. 23, 2013).

<sup>23</sup> 13 CFR 121.201, Sector 22, Utilities.

<sup>24</sup> The Small Business Administration sets the threshold for what constitutes a small business. Public utilities may fall under one of several different categories, each with a size threshold based on the company's number of employees, including affiliates, the parent company, and subsidiaries. The possible categories for the applicable entities have a size threshold ranging from 250 employees to 1,000 employees. For the analysis in this proposed rule, we are using the 1,000 employee threshold for each applicable entity type.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Public Law 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III

under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of “low-moderate risk” or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device.

On June 22, 2013, Argo Medical Technologies, Inc., submitted a request for classification of the ReWalk under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set

forth in section 513(a)(1). FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on June 26, 2014, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 890.3480.

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for a powered exoskeleton will need to comply with the special controls named in this final order. The device is assigned the generic name powered exoskeleton, and it is identified as a prescription device that is composed of an external, powered, motorized orthosis used for medical purposes that is placed over a person’s paralyzed or weakened limbs for the purpose of providing ambulation.

FDA has identified the following risks to health associated specifically with this type of device, as well as the measures required to mitigate these risks in table 1.

**TABLE 1—POWERED EXOSKELETON RISKS AND MITIGATION MEASURES**

Identified risk	Mitigation measure
Instability, falls, and associated injuries .....	Clinical testing. Training. Software verification, validation, and hazard analysis. Wireless testing. Electromagnetic compatibility (EMC) and electromagnetic interference (EMI) testing. Electrical safety testing. Design characteristics. Non-clinical performance testing. Water/particle ingress testing. Durability testing. Battery testing. Labeling.
Bruising, skin abrasion, pressure sores, soft tissue injury .....	Clinical testing. Training. Labeling.
Diastolic hypertension and changes in blood pressure, and heart rate ..	Clinical testing. Training. Labeling.
Adverse tissue reaction .....	Biocompatibility assessment.
Premature battery failure .....	Battery testing. Labeling.
Interference with other electrical equipment/devices .....	EMC/EMI testing. Labeling.

TABLE 1—POWERED EXOSKELETON RISKS AND MITIGATION MEASURES—Continued

Identified risk	Mitigation measure
Burns, electrical shock .....	Electrical safety testing. Thermal testing. Labeling. Clinical testing.
Device malfunction resulting in unanticipated operation (e.g., device stoppage, unintended movement).	Non-clinical performance testing. Training. Software verification, validation, and hazard analysis. Electrical safety testing. Battery testing. Water/particle ingress testing. Wireless testing. EMC/EMI testing. Flammability testing. Labeling.
Use error .....	Clinical testing. Training. Labeling.

FDA believes that the following special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of the safety and effectiveness:

- Elements of the device materials that may contact the patient must be demonstrated to be biocompatible.
- Appropriate analysis/testing must validate electronic compatibility/interference (EMC/EMI), electrical safety, thermal safety, mechanical safety, battery performance and safety, and wireless performance, if applicable.
- Appropriate software verification, validation, and hazard analysis must be performed.
- Design characteristics must ensure geometry and materials composition are consistent with intended use.
- Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. Performance testing must include:
  - Mechanical bench testing (including durability testing) to demonstrate that the device will withstand forces, conditions, and environments encountered during use;
  - simulated use testing (*i.e.*, cyclic loading testing) to demonstrate performance of device commands and safeguard under worst case conditions and after durability testing;
  - verification and validation of manual override controls are necessary, if present;
    - the accuracy of device features and safeguards; and
    - device functionality in terms of flame retardant materials, liquid/particle ingress prevention, sensor and actuator performance, and motor performance.

- Clinical testing must demonstrate safe and effective use and capture any adverse events observed during clinical use when used under the proposed conditions of use, which must include considerations for:
  - Level of supervision necessary and
  - environment of use (*e.g.*, indoors and/or outdoors), including obstacles and terrain representative of the intended use environment.
  - A training program must be included with sufficient educational elements so that upon completion of training program, the clinician, user, and companion can:
    - Identify the safe environments for device use,
    - use all safety features of device, and
    - operate the device in simulated or actual use environments representative of indicated environments and use.
  - Labeling for the Physician and User must include the following:
    - Appropriate instructions, warning, cautions, limitations, and information related to the necessary safeguards of the device, including warning against activities and environments that may put the user at greater risk;
    - specific instructions and the clinical training needed for the safe use of the device, which includes:
      - Instructions on assembling the device in all available configurations;
      - instructions on fitting the patient;
      - instructions and explanations of all available programs and how to program the device;
      - instructions and explanation of all controls, input, and outputs;
      - instructions on all available modes or states of the device;
      - instructions on all safety features of the device; and
      - instructions for properly maintaining the device;

- Information on the patient population for which the device has been demonstrated to have a reasonable assurance of safety and effectiveness;
  - pertinent non-clinical testing information (*e.g.*, EMC, battery longevity); and
  - a detailed summary of the clinical testing including:
    - Adverse events encountered under use conditions,
    - summary of study outcomes and endpoints, and
    - information pertinent to use of the device including the conditions under which the device was studied (*e.g.*, level of supervision or assistance, and environment of use (*e.g.*, indoors and/or outdoors) including obstacles and terrain).

Powered exoskeleton devices are restricted to patient use only upon the authorization of a practitioner licensed by law to administer or use the device; see section 520(e) of the FD&C Act (21 U.S.C. 360j(e)) and 21 CFR 801.109 (*Prescription devices*). Prescription-use restrictions are a type of general controls as defined in section 513(a)(1)(A)(i) of the FD&C Act.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device

must submit to FDA a premarket notification, prior to marketing the device, which contains information about the powered exoskeleton they intend to market.

## II. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## III. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling have been approved under OMB control number 0910–0485.

## IV. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at <http://www.regulations.gov>.

1. K131798: De Novo Request per 513(f)(2) from Argo Medical Technologies, Inc., dated June 22, 2013.

### List of Subjects in 21 CFR Part 890

Medical devices, Physical medicine devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 890 is amended as follows:

### PART 890—PHYSICAL MEDICINE DEVICES

■ 1. The authority citation for 21 CFR part 890 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add § 890.3480 to subpart D to read as follows:

#### § 890.3480 Powered exoskeleton.

(a) *Identification.* A powered exoskeleton is a prescription device that is composed of an external, powered, motorized orthosis used for medical purposes that is placed over a person's paralyzed or weakened limbs for the purpose of providing ambulation.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Elements of the device materials that may contact the patient must be demonstrated to be biocompatible.

(2) Appropriate analysis/testing must validate electromagnetic compatibility/interference (EMC/EMI), electrical safety, thermal safety, mechanical safety, battery performance and safety, and wireless performance, if applicable.

(3) Appropriate software verification, validation, and hazard analysis must be performed.

(4) Design characteristics must ensure geometry and materials composition are consistent with intended use.

(5) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. Performance testing must include:

(i) Mechanical bench testing (including durability testing) to demonstrate that the device will withstand forces, conditions, and environments encountered during use;

(ii) Simulated use testing (*i.e.*, cyclic loading testing) to demonstrate performance of device commands and safeguard under worst case conditions and after durability testing;

(iii) Verification and validation of manual override controls are necessary, if present;

(iv) The accuracy of device features and safeguards; and

(v) Device functionality in terms of flame retardant materials, liquid/particle ingress prevention, sensor and actuator performance, and motor performance.

(6) Clinical testing must demonstrate safe and effective use and capture any adverse events observed during clinical use when used under the proposed conditions of use, which must include considerations for:

(i) Level of supervision necessary, and

(ii) Environment of use (*e.g.*, indoors and/or outdoors) including obstacles and terrain representative of the intended use environment.

(7) A training program must be included with sufficient educational elements so that upon completion of training program, the clinician, user, and companion can:

(i) Identify the safe environments for device use,

(ii) Use all safety features of device, and

(iii) Operate the device in simulated or actual use environments representative of indicated environments and use.

(8) Labeling for the Physician and User must include the following:

(i) Appropriate instructions, warning, cautions, limitations, and information related to the necessary safeguards of the device, including warning against activities and environments that may put the user at greater risk.

(ii) Specific instructions and the clinical training needed for the safe use of the device, which includes:

(A) Instructions on assembling the device in all available configurations;

(B) Instructions on fitting the patient;

(C) Instructions and explanations of all available programs and how to program the device;

(D) Instructions and explanation of all controls, input, and outputs;

(E) Instructions on all available modes or states of the device;

(F) Instructions on all safety features of the device; and

(G) Instructions for properly maintaining the device.

(iii) Information on the patient population for which the device has been demonstrated to have a reasonable assurance of safety and effectiveness.

(iv) Pertinent non-clinical testing information (*e.g.*, EMC, battery longevity).

(v) A detailed summary of the clinical testing including:

(A) Adverse events encountered under use conditions,

(B) Summary of study outcomes and endpoints, and

(C) Information pertinent to use of the device including the conditions under which the device was studied (*e.g.*, level of supervision or assistance, and environment of use (*e.g.*, indoors and/or outdoors) including obstacles and terrain).

Dated: February 18, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–03692 Filed 2–23–15; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2015–0096]

#### Drawbridge Operation Regulation; Umpqua River, Reedsport, OR

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the U.S. 101 Highway Bridge across the Umpqua River, mile 11.1, at Reedsport, OR. The deviation is necessary to accommodate steel bracing repair and electrical station repair on the bridge. This deviation allows the U.S. 101 Umpqua River Bridge to remain in the closed position during repairs.

**DATES:** This deviation is effective from 6 a.m. on February 23, 2015 to 11 p.m. on March 6, 2015.

**ADDRESSES:** The docket for this deviation, [USCG–2015–0096] is available at <http://www.regulations.gov>. Type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282, email [d13-pf-d13bridges@uscg.mil](mailto:d13-pf-d13bridges@uscg.mil). If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The Oregon Department of Transportation requested that the U.S. 101 Umpqua River drawbridge, near Reedsport Oregon, remain in the closed-to-navigation position to facilitate steel bracing and stanchion repair. The U.S. 101 Bridge crosses the Umpqua River at mile 11.1 and provides 36 feet of vertical clearance above mean high water when in the closed position. Currently, the U.S. 101 Umpqua River Bridge is operating under a Temporary Final Rule (TFR), 33 CFR 117.898(d), 78

FR 70222, that allows the bridge to open once at 7 a.m. and once at 6 p.m., if an opening is requested at least six hours in advance. This TFR is effective from December 1, 2013 to September 30, 2015.

This deviation period is from 6 a.m. on February 23, 2015 to 11 p.m. March 6, 2015. The deviation allows the U.S. 101 Umpqua River Bridge, mile 11.1, to remain in the closed-to-navigation position and need not open for maritime traffic from 6 a.m. on February 23, 2015 to 11 p.m. March 06, 2015, except that, in approximately the second week of the project, the bridge will open at 7 a.m. and 6 p.m. on one day only if a minimum of 6 hours advanced notice is given. Mariners needing an opening, approximately half way through this project, are requested to coordinate with the bridge repair Project Inspector, Don Hyatt, at 541–297–8804, with as much advanced notice as possible.

Waterway usage on this stretch of the Umpqua River includes vessels ranging from occasional commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridge’s operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The draw span will not be able to open for emergencies and there is no immediate alternate route for vessels to pass. Vessels which do not require an opening of the bridge may continue to transit beneath the bridge during this repair period.

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

Dated: February 13, 2015.

**Steven M. Fischer,**

*Bridge Administrator, Thirteenth Coast Guard District.*

[FR Doc. 2015–03681 Filed 2–23–15; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 62

RIN 2900–AO50

#### Supportive Services for Veteran Families Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final, with changes, a proposed rule of the Department of Veterans Affairs (VA) to

amend its regulations concerning the Supportive Services for Veteran Families Program (SSVF). In the proposed rule published on May 9, 2014, VA proposed to make a number of changes to the SSVF program to emphasize the intended goals of SSVF. VA is making minor changes to the proposed rule based on comments we received.

**DATES: Effective Date:** This rule is effective on March 26, 2015.

**FOR FURTHER INFORMATION CONTACT:** John Kuhn, National Center for Homelessness Among Veterans, Supportive Services for Veteran Families Program Office (10NC1), 4100 Chester Avenue, Suite 200, Philadelphia, PA 19104, (877) 737–0111. (This is a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On May 9, 2014, VA published a proposed rule in the **Federal Register**, at 79 FR 26669, to amend its regulations concerning the Supportive Services for Veterans Families (SSVF) program. Under authority provided by 38 U.S.C. 2044, VA has offered grants to eligible entities, identified in the regulations, that provide supportive services to very low-income veterans and families who are at risk for becoming homeless or who, in some cases, have recently become homeless. The program has been a tremendous success, providing services to over 62,000 participants in fiscal year (FY) 2013, 20,000 more than projected. To date, over 80 percent of those discharged from SSVF have been placed in or saved their permanent housing. VA received 27 comments on the rule, and many of them supported the proposed changes in whole or in part. This final rule adopts the proposed rule with changes as discussed below.

#### Definitions

Several commenters offered suggestions regarding the definition of various terms. The most common recommendation was to amend the definition of the term “homeless.” Several of these comments recommended that VA establish different standards for homelessness in urban and rural areas. However, “homeless” is a term defined in statute. In 38 U.S.C. 2044(f)(3), the term “homeless” is defined as having the same meaning given that term in section 103 of the McKinney-Vento Homelessness Assistance Act, codified at 42 U.S.C. 11302, which does not differentiate between urban and rural areas. Consequently, VA lacks the authority to vary the definition of “homeless” between urban and rural areas. Even if VA did have authority to apply different definitions for different

areas, one of the aims for the proposed rule was to adopt a common definition that would be used by both VA and the Department of Housing and Urban Development (HUD), which similarly does not contemplate a difference between urban and rural areas in its regulatory definition of “homeless.” See 24 CFR 576.2. Use of a common definition simplifies operations for community providers and ensures access to a range of services from both Departments. This goal was supported by several commenters, who endorsed the adoption of a common definition. VA agrees with these commenters and is not making a change to the definition of homeless in this final rule.

The SSVF program does allow for some variation between urban and rural areas, and to the extent permitted by statute at 38 U.S.C. 2044(a)(5) and 2044(f)(6)(C), VA encourages community providers to consider the local conditions and needs of veterans in their community when developing programs and delivering services. VA can also use Notices of Funding Availability (NOFA) to emphasize areas where SSVF recipients should concentrate resources or support, and VA believes the NOFA process provides sufficient flexibility to address the needs of urban and rural veterans alike.

One commenter suggested the definition of homeless be revised to match that used in the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act, Public Law 111–22. The changes to the definition of homeless enacted with the HEARTH Act are codified at 42 U.S.C. 11302, which is the same definition VA uses based on 38 U.S.C. 2044(f)(3). VA believes HUD’s implementing regulations, at 24 CFR 576.2, take into account the recent changes in law and provide the best source for a reference to homelessness because it will ensure a common Federal definition for homeless benefits. Another commenter suggested that HUD’s definition at 24 CFR 576.2 was out of date and antiquated, and suggested that VA should emphasize that veterans who are at-risk for homelessness should be eligible. VA’s definition of “homeless” includes those who are at-risk for homelessness, and in each NOFA, VA identifies the prevention of homelessness among those who are at risk as the first category of eligible persons. Additionally, HUD’s regulations are used to implement the Homelessness Prevention and Rapid Rehousing Program and the Emergency Solutions Grants Program, which are designed to assist beneficiaries who are homeless or at risk for homelessness by

coordinating the provision of services and short-term housing. VA is therefore not making a change based on these comments.

Another commenter noted that while HUD’s definition of “homeless” does not take into account the length of time between homeless episodes when defining chronically homeless, VA should develop a clearer definition for chronically homeless as it relates to other VA homeless assistance programs. However, and as the commenter notes, the SSVF program is not designed to address the problems of the chronically homeless. Additionally, VA believes maintaining a common definition with HUD is important to ensure that providers are using a term with a common meaning when providing services to homeless veterans. VA is not making a change based on this comment.

One issue also concerning the definition of “homeless” was whether persons temporarily residing with others (“couch surfing”) are included in the definition. This issue was raised by several commenters, some of whom came to opposite conclusions on the matter. To clarify, so-called couch surfers are not literally “homeless,” as the term is used by HUD and VA, but they are at risk of homelessness, and hence could still be eligible for benefits through the SSVF program. VA annually produces a NOFA to advise interested parties to apply for SSVF funding, and in the NOFA, VA describes different categories for funding and support. Category 1 refers to prevention, and entities providing services to “couch surfers” would be assisting persons at risk for homelessness, and hence would qualify.

VA also received a comment recommending a revised definition for the term “permanent housing” to refer to housing without a designated length of stay. VA agrees with this comment and is revising the definition of permanent housing accordingly to clarify that an undesignated length of stay is one where an individual or family has a lease that is renewable and terminable only for cause. This change will ensure that homeless veterans with permanent housing will have full tenancy rights under the law and would ensure that they cannot be placed into settings that SSVF is not intended to support, such as transitional housing or institutional care facilities.

We also received two recommendations to add a definition of “rapid rehousing.” Both commenters believed that adding this definition would assist grantees by providing a better understanding of the principal

mission of SSVF. We agree, and are adopting the definition of “rapid rehousing” recommended by one of the commenters. Both commenters offered recommendations, and VA is selecting the proposal with a more robust and well-developed definition. That definition will provide that “rapid rehousing” is an intervention designed to help individuals and families quickly exit homelessness and return to permanent housing. It will emphasize that rapid rehousing is provided without preconditions (such as employment, income, absence of criminal record, or sobriety), and that resources and services should be tailored to the unique needs of the household. It will clarify that there are three goals associated with rapid rehousing: Identifying housing, providing rent and move-in financial assistance, and case management and services. We also state that while a rapid rehousing program must have all three core components available, it is not required that a single entity provide all three services nor that a household utilize them all. Although this term is not used in these regulations, it is a term that is commonly used in NOFAs and administration of the SSVF program.

Finally, we received one comment recommending we amend the definition for the term “veteran.” While 38 U.S.C. 2044 does not include a definition for the word “veteran,” this term is defined in statute at 38 U.S.C. 101(2). VA is not making a change based on this comment.

#### **Eligibility for SSVF Services**

Another related issue raised by several commenters dealt with eligibility for SSVF services. One commenter recommended that children and former spouses of veterans be eligible for benefits through the SSVF program. VA does not have authority to provide assistance to such persons unless they are part of a “veteran family,” which is defined in 38 U.S.C. 2044(f)(7) to include “a veteran who is a single person and a family in which the head of the household or the spouse of the head of the household is a veteran.” The term spouse is defined at 38 U.S.C. 101(31), and does not include divorcees. VA is not making a change based on these comments.

One commenter expressed support for the “but for” test used to determine a veteran’s eligibility for assistance from SSVF, but encouraged VA to adopt a mandatory assessment for application in VA’s screening requirements to ensure consistent and intelligent application of this standard. Another commenter suggested that such guidance could be

provided through a guidebook or through SSVF University. The “but for” test determines eligibility by asking if a veteran would be homeless if SSVF services were not being provided. This standard is used in HUD’s programs, and ensures that recipients are not determined to be ineligible for a program’s benefits upon receiving such benefits. VA does not believe it should articulate additional requirements in regulations. VA has published an SSVF Program Guide (updated March 31, 2014, available online at: [http://www.va.gov/HOMELESS/ssvf/docs/SSVFUniversity/SSVF\\_Program\\_Guide\\_March31\\_2014.pdf](http://www.va.gov/HOMELESS/ssvf/docs/SSVFUniversity/SSVF_Program_Guide_March31_2014.pdf)) that provides guidance to SSVF recipients to consider when applying the “but for” test, and VA’s NOFAs provide further guidance as well. Indeed, another commenter supported adoption of the “but for” test and specifically noted that the next SSVF NOFA would offer necessary guidance in this area. As this commenter assumed, VA will update its guidance in the next NOFA we issue to reflect the changes made by this regulation. VA staff is also available to assist recipients in making these determinations when appropriate. VA is concerned that if it provided further guidance in regulation, it could produce a national standard that cannot be adjusted to account for local variations, and that hence would be inadequate for serving homeless veterans and their families in at least some communities. VA is not making a change from the proposed rule based on this comment.

Another commenter suggested that grantees should focus their resources on the lowest-income veterans, and that programs with such a focus tend to have the greatest results in terms of reducing homelessness. VA agrees and believes that the new requirement for grantees to identify extremely low-income veterans and target resources to this population will have a positive effect. Another commenter recommended that VA pilot this approach, rather than establish a common requirement across the country, to ensure that local variables are taken into account. VA’s definition of extremely low-income veteran family focuses on the area median income (AMI) specifically so that differences in income and cost of living can be taken into account. Additionally, grantees are located in the communities they serve and are uniquely equipped to address the needs of the local homeless population. VA is not making any changes based on these comments.

VA received several comments concerning VA’s proposed standard in § 62.34(f), which would have limited SSVF emergency housing assistance to

situations where permanent housing has been identified. In the supplemental information of the proposed rule, VA stated that permanent housing must be both identified and secured. These commenters expressed concern that the requirement that such housing be “secured” could result in homeless veterans having no short-term assistance, and would be inconsistent with the “housing first” model of the program. VA agrees with these concerns and is eliminating the requirement that such housing be secured. Under the revised provision, it will be sufficient to generally identify a housing unit to provide emergency housing assistance, as long as the other requirements of § 62.34 are satisfied.

VA also proposed that homeless veterans could receive up to 72 hours of emergency housing assistance if no identified housing is available. In recognition of a comment that 72 hours may not always be enough time to secure housing for a single veteran, VA is including a new provision that will allow for continued provision of emergency housing assistance when the grantee can certify that no other housing is available. For example, if a grantee can certify that no beds are available in a Grant and Per Diem (GPD) residence or a Health Care for Homeless Veterans (HCHV) residential program, the grantee can continue to provide emergency assistance to a homeless veteran through the SSVF program to ensure the veteran has a place to stay. VA is also extending the period of time in which a veteran and his or her spouse with dependent(s) can receive emergency housing assistance from 30 days to 45 days. We believe that by including this flexibility, more homeless veterans and their families will avoid a relapse into homelessness while waiting for permanent housing.

One commenter suggested that extremely low-income veteran families may need extended assistance, but that such extensions should be determined for each individual family through routine reassessments. VA notes that SSVF grantees decide the type and amount of assistance to offer participants, and that they can provide sustained support when appropriate. VA believes that the latitude provided for extremely low income families in the proposed rule is appropriate, and that no further changes are needed as a result of this comment.

Another commenter suggested that veterans who are in a GPD program for more than 30 days should be able to receive assistance through the SSVF program. VA notes that such veterans, if they otherwise meet the eligibility

criteria for the SSVF program, may receive services from both programs. SSVF is intended to provide rapid re-housing assistance through a short-term, focused intervention. As long as the assistance that GPD participants require is consistent with this mission and the veteran meets established eligibility criteria, SSVF grantees should not hesitate to provide services to them. VA is not making a change based on this comment.

Another commenter suggested that the proposed rule would mean that service-connected disabled women veterans would not be eligible for services from the SSVF program if they did not have a spouse or minor dependents. This is not a correct reading of the rule. A veteran family, as defined in § 62.2, includes a veteran who is a single person. Nothing in the proposed rule would change this standard, and as a result, VA is not making a change based on this comment.

Finally, one commenter recommended that VA only include two categories of eligible veterans under § 62.11: Those needing prevention and those seeking rapid re-housing. While these are the two primary forms of assistance, VA believes the three criteria identified in § 62.11 represent the best description of eligible veterans, and therefore, VA is making no changes based on this comment.

#### Types of Covered Services

Several commenters provided recommendations concerning the types of services that SSVF assistance should be able to provide. One commenter recommended that emergency housing assistance be available for up to 9 months during any 12 month period to ensure that families are able to resolve crises that could otherwise result in them becoming homeless. The proposed rule would allow for this extension, so we are not making any changes based on this comment.

Commenters recommended that VA create a separate category of assistance to cover a reasonable broker’s fee for finding and arranging permanent housing. The commenters explained that broker’s fees are often necessary in high population density areas, such as New York City or Los Angeles, and that fees can sometimes use the entire available amount of housing stability assistance. VA agrees with these comments and is including a new paragraph (e)(3) under § 62.34 to cover the category of assistance that would specifically allow for provision of a reasonable broker’s fee when appropriate.



Another commenter urged VA to allow SSVF funds to pay for emergent medical or dental needs and medication. We do not believe we have authority to allow grant recipients to provide financial assistance for such purposes, and as a result, are not making a change based on this comment. The supportive services VA can provide are identified at 38 U.S.C. 2044(b), and paragraph (b)(1)(D) of section 2044 only permits VA to offer “assistance in obtaining and coordinating the provision of other public benefits . . . including—(i) health care services (including obtaining health insurance).” In this context, VA interprets the statute to only authorize making funds available for coordinating and obtaining health care services from other providers, not to pay for or furnish such care or services. Eligible veterans may receive health care through VA medical facilities to address their medical needs.

One commenter suggested VA allow increased flexibility for child care services. The commenter noted that veteran families can have a multitude of compositions, and that there may not be adequate community resources to support a child after school. VA understands that different families and children have different needs, but we believe it is necessary that we establish some standards to ensure that services are not provided for children who do not require child care. We believe that 13 is an appropriate age to draw that line, as children over that age are generally considered capable of taking care of themselves for short periods of time that would otherwise require supervision or care. Removing the age limit could allow misuse of these benefits, which would result in fewer resources being available to assist homeless veterans and their families.

Another commenter recommended that VA ensure that basic air conditioning and heating should be an allowable expense in certain situations. VA believes that the proposed revisions would allow this when appropriate. In § 62.36(f), which cites to HUD’s regulations at 24 CFR 583.300(b), we establish standards of habitability. HUD’s regulations provide in 24 CFR 583.300(b)(7) that “[t]he housing must have adequate heating and/or cooling facilities in proper operating condition.” If the residence requires but lacks heating or cooling based on the local climate, it would not be eligible for housing. As a result, VA is not making a change based on this comment.

One commenter stated that women veterans look for, but are not finding, additional assistance from other VA,

Federal, state, or local programs. VA currently requires SSVF grantees to coordinate access for other public benefits, and our reviews of these programs indicate that such coordination is taking place. As a result, we are not making any changes from this comment.

Another commenter suggested that the proposed changes to general housing stability assistance are acceptable if the limits identified in the rule are followed. VA intends to ensure that SSVF grantees adhere to the requirements of the program, and is not making a change based on this comment.

Several commenters recommended that SSVF funding should be available to assist homeowners. One commenter provided several scenarios in which a homeowner should qualify for financial assistance, including when the home’s value is below the local average, when the home is uneconomical based on the potential sale price versus the demolition cost, when the home’s tax value is less than 100% of the area median income, or when relocating the veteran would increase the risk for homelessness. This commenter argued that because poverty is often inter-generational, VA should provide greater flexibility to assist homeowners.

VA agrees that poverty and homelessness can impact multiple generations of a family, and that is why it has supported the SSVF program, which provides assistance to a veteran’s family to help prevent and escape from homelessness. VA also notes that homeowners are eligible under § 62.11(a) if they would be lacking a fixed, regular, and adequate nighttime residence but for the grantee’s assistance. Under the proposed rule at § 62.38(a), SSVF grant recipients could assist homeowners in a number of ways, but could not provide mortgage assistance. Homeowners often require substantial assistance to cover costs or fees associated with a mortgage, and hence would require a greater share of resources than renters or leasers of property, resulting in an uneven distribution of assistance. Additionally, there are many programs at the Federal, state, and local levels to assist homeowners with their mortgages. Also, there is little evidence that homeowners become homeless upon losing a property. VA can ensure more persons receive support through the SSVF program by excluding mortgage costs from eligible financial assistance. Consequently, VA is not making a change to allow for financial assistance to cover costs associated with a mortgage.

One commenter asked VA to clarify what “other costs associated with home ownership” includes. This was a phrase we used in the supplemental information of the proposed rule to describe § 62.38(a). That paragraph says that SSVF funds may not be used to pay for “mortgage costs or costs needed by homeowners to assist with any fees, taxes, or other costs of refinancing.” We believe this language is clear and refers to costs associated with paying a security interest or tax assessment for real property, and we are not making a change based on this comment.

One commenter suggested that SSVF funds be made available to cover the cost of home repairs or alterations. VA does not believe this would be an appropriate use of SSVF funds for the same reason that mortgage costs are not included. SSVF is not a capital grant program, and other programs, such as Adapted Housing grants overseen by the Veterans Benefits Administration, already provide this service. VA is not making a change based on this comment.

One commenter suggested that VA should specifically state that legal assistance can be made available to resolve transportation issues. We agree that difficulty securing transportation resulting from the lack of a driver’s license can be an obstacle to escaping homelessness. While we believe the proposed rule would have allowed for this, VA is making a minor revision to § 62.33(g) to specifically note that authorized legal assistance also includes assistance such as the lack of a driver’s license.

One commenter expressed concern with extending the period of Temporary Financial Assistance (TFA) because it could foster more reliance on the program. As explained in the proposed rule, VA received feedback from grantees suggesting that veteran families at lower levels of income are more difficult to reach and require more resources for interventions to succeed. Based on this feedback, we believe that the increased benefit amounts will help ensure that grantees can be successful in supporting extremely low-income veteran families while minimizing the risk that veteran families become dependent on such assistance over the long term. As a result, VA is making no changes based on this comment.

Another commenter recommended that providers be authorized to make emergency housing assistance available once every 2 years instead of once every 3 years, as it is not unusual for a person who is homeless, formerly homeless, or at risk of homelessness to face another crisis that would require emergency

assistance within a 2 year period of initially receiving support. VA agrees with this comment, and is changing the 3 year standard proposed in § 62.33 and 34 to now permit such assistance no more than once every 2 years. These revisions include changes to § 62.34(c)(1)–(2), which were not previously identified in the proposed rule but which would be inconsistent given these changes.

Another commenter noted that limitations on the use of general housing stability assistance funds is appropriate, so long as the limits in the rule are followed, and VA intends to do so. We are not making a change based on this comment.

Finally, one commenter suggested that caps on TFA for otherwise eligible families fleeing domestic violence should be lifted in the event that a new episode of domestic violence occurs. The commenter noted that this change would allow SSVF grantees to serve the immediate needs of households fleeing domestic violence. VA agrees with this recommendation and is including a provision in a new paragraph (e) of § 62.35 that would allow families experiencing domestic violence to receive additional TFA resources. This would apply even if the veteran was the aggressor in the situation. Under the law, a veteran family is defined to include a veteran who is a single person, and a family in which the head of household or the spouse of the head of household is a veteran. 38 U.S.C. 2044(f)(7). Through regulation, VA has interpreted this to authorize support if a veteran becomes absent from a household or dies while other members of the veteran family are receiving supportive services for a grace period, not to exceed 1 year, following the absence or death of the veteran. 38 CFR 62.35(c). In the event a participant becomes ineligible to receive supportive services under this Program, the grantee must provide the participant with information on other available programs or resources. 38 CFR 62.35(d). VA would apply these same principles and practices to cases of domestic violence. Families experiencing domestic violence should not be forced to remain in a volatile situation that can contribute to continued homelessness. VA is additionally revising the provisions concerning TFA to specifically authorize additional allocations in the event of a subsequent episode of domestic violence. Receipt of such support would reset the time period during which a family could not receive services under § 62.34; for example, under § 62.34(b)(1), a participant may receive payments for

utilities for a maximum of 10 months during a 2-year period, and the 2-year period would be re-started after providing additional assistance under § 62.35(e) for a family fleeing domestic violence. It is important to understand that these benefits will be provided on a temporary basis and grantees should work to connect the family with other resources within the Continuum of Care. In addition, these benefits will only be available for families who are already receiving supportive services through this Program. If a family has previously left the household of an eligible veteran and seeks services from this Program, VA would not be able to provide support.

In developing the final rule, VA identified an area of potential confusion or conflict. In proposed § 62.34(a)(1), VA proposed allowing for rental assistance to be used to pay for penalties or fees incurred and required to be paid by the participant under an existing lease or court order. In proposed § 62.38(g), VA proposed prohibiting grantees from using supportive services grant funds to pay for court-ordered judgments or fines. These provisions could be read in conflict, but were not intended to be. To remove any confusion, VA is modifying § 62.38(g) to prohibit the use of funds to pay for court-ordered judgments, except when such payments are authorized under § 62.34(a)(1). This revision is purely technical and will clarify VA's original intent.

#### Logistical and Operational Issues

Several commenters raised questions or offered recommendations on the logistics and operations of the SSVF program. One asked if the proposed revisions would prohibit a participating organization from reviewing the classification of participants to determine in which category they should be placed. The rule only requires that a reclassification occur once every 3 years, but it does not prohibit a review more often than that, so if a provider wanted to review these classifications more frequently, they would be free to do so. VA is not making a change based on this comment.

One commenter, in noting the proposed changes, suggested that the percentage of funds allocated for homelessness prevention should be increased to support extremely low-income veteran families, case management services, and other supportive services. Determinations regarding the allocation of funds are outside the scope of this rule, as they are announced in each year's NOFA. Future NOFAs will consider the

changes made by this rule when allocating resources. The same commenter suggested that grant recipients in the same geographic area will coordinate outreach efforts to identify appropriate veteran families. This is a stated expectation for the program already, and VA agrees with this approach wholeheartedly. Such a strategy will ensure that assistance is available for more veterans in a given area. VA is not making a change based on this comment.

One commenter also recommended that VA provide more HUD–VA Supportive Housing (HUD–VASH) vouchers to assist veterans in securing housing. This comment is outside the scope of this rulemaking, and the number of the HUD–VASH vouchers issued each year is determined based on the availability of appropriations. As a result, VA is not making a change based on this comment.

Two commenters suggested that participation in a Continuum of Care's (CoC) coordinated assessment system should be required for participating grantees. VA agrees with this recommendation, and adopts the specific language provided by one commenter in this area as a new paragraph (g) in § 62.36. Specifically, VA will require grantees to participate in the “development, implementation, and ongoing operations of their local Continuum of Care's coordinated assessment system, or equivalent, as described in the McKinney-Vento Act as amended by the HEARTH Act.” Many providers under the SSVF program are already familiar with participating in these efforts, and VA agrees with the commenters that this will compel greater collaboration among VA, HUD, and CoC partners and strengthen VA's oversight of coordination activities among all grantees and their communities.

Another commenter recommended that VA allow SSVF administrators to exceed identified limits on the amount of assistance that can be provided in a limited number of cases. While VA understands the point that some special cases may require assistance in excess of the limits, allowing exceptions to these limits would be counterproductive by encouraging high resource use to a small number of veterans at the expense of providing assistance to a larger number of veterans. Moreover, these exceptions could ultimately render the rule meaningless, and the administrative burden for tracking or approving such exceptions would divert resources from assisting homeless veterans. As a result, VA is not making changes based on this comment.

Another commenter offered a similar recommendation by suggesting that rather than establishing maximum amounts of financial assistance that can be offered over a set period of time (e.g., no more than \$1,500 per 2-year period for general housing stability under § 62.34(e)(2)), VA should allow smaller amounts of assistance over a longer period of time. We believe that such a system would be extremely difficult to administer and would provide limited benefits for veterans. SSVF grantees would have to track every allocation made to every veteran family for every purpose to determine if such allocations were in excess of the authorized amount over an extended period of time. This would require greater overhead expenses, which would detract from the amount made available to homeless veterans.

One commenter expressed concern that funds distributed through the SSVF program were being provided to grantees in the Atlanta metro area who were not using these resources to provide assistance to homeless veterans. The commenter asked that no funding be provided to these entities until after there has been a formal investigation by the Office of Inspector General (OIG). VA takes seriously any concerns about the allocation of available resources. OIG recently completed an audit of the SSVF program (“Audit of the Supportive Services for Veterans Families Program,” OIG Report 13–01959–109, published March 31, 2014) and found that it has “adequate financial controls in place that are working as intended to provide reasonable assurance that funds are appropriately expended by grantees.” VA forwarded this comment to the OIG, which has authority to determine whether it will conduct a review. If OIG investigates and finds there are or were issues, we will take appropriate corrective action to ensure that resources are used for authorized purposes only.

Based on the rationale set forth in the preamble to the proposed rule and in this preamble, VA is adopting the proposed rule as a final rule, with the above stated changes.

#### **Effect of Rulemaking**

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA’s implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this

rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

#### **Paperwork Reduction Act**

Although this action contains provisions constituting collections of information, at 38 CFR 62.20, 62.36, and 62.60, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this final rule. The information collection requirements for §§ 62.20, 62.36, and 62.60 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900–0757.

In § 62.20(a), we state that the collection of information must include a description of how the applicant will ensure that the program is targeted to very-low income families. Under the current OMB-approved application, VA Form 10–10072, VA requires the applicant to “[d]escribe the proposed outreach and referral plan to identify and assist eligible very low-income Veteran families who are most in need of supportive services.” The current application specifies that the response should include an explanation of the “[i]dentification of target population(s) to be served.” Because this specific question on the application correlates directly with the requirement that we are adding in § 62.20(a), the information collection and corresponding burden hours remain unchanged.

In a final rule published on November 10, 2010, we stated that OMB had approved collections of information contained in, inter alia, § 62.36(c). 75 FR 68975, 68979–80, Nov. 10, 2010. In both the proposed and final regulation, a collection also appeared in § 62.36(a). That collection required grantees to classify all participants and verify and document participant eligibility at least once every 3 months. The verification of eligibility is reflected on VA Form 10–0508b, one of the forms approved by OMB and assigned OMB control number 2900–0757, which requires quarterly reports of detailed information and data on participant screenings and compliance with all SSVF requirements. However, the requirement to reclassify participants every 3 months was not contained on that form. In § 62.36(a), we remove the requirement that grantees reclassify participant eligibility every 3 months; however, we retain the requirement that the grantee certify participant eligibility. Therefore, although we are amending the collection that appears at § 62.36(a), the amendment will not result in a change

to the form. Moreover, although we omitted specific reference to § 62.36(a) in the final rulemaking published on November 10, 2010, we did in fact seek approval for the collection requirements in VA Form 10–0508b, which appear in this rule. Therefore, we do not believe that this rulemaking contains amendments to collections approved under OMB control number 2900–0757.

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will only impact those entities that choose to participate in SSVF. Small entity applicants will not be affected to a greater extent than large entity applicants. Small entities must elect to participate, and it is considered a benefit to those who choose to apply. To the extent this final rule will have any impact on small entities, it will not have an impact on a substantial number of small entities. In FY 2013, 151 organizations successfully submitted applications for SSVF funding and would be effected by this rule. The changes described in this rule should have a positive impact compared to the existing rule, as changes will generally aid grantees in providing service and thereby reduce time demands. On this basis, the Secretary certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

#### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requires review by

OMB, unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s Web site at <http://www.va.gov/orpm/>, by following the link for VA Regulations Published from FY 2004 to FYTD.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits, and 64.033, VA Supportive Services for Veteran Families Program.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, approved this

document on February 12, 2015, for publication.

**List of Subjects in 38 CFR Part 62**

Administrative practice and procedure, Day care, Disability benefits, Government contracts, Grant programs-health, Grant programs-social services, Grant programs-transportation, Grant programs-veterans, Grants-housing and community development, Health care, Homeless, Housing, Housing assistance payments, Indian-lands, Individuals with disabilities, Low and moderate income housing, Manpower training program, Medicare, Medicaid, Public assistance programs, Public housing, Relocation assistance, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Social Security, Supplemental Security Income (SSI), Travel and transportation expenses, Unemployment compensation, Veterans.

Dated: February 19, 2015.

**William F. Russo,**

*Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, U.S. Department of Veterans Affairs.*

For the reasons set out in the preamble, the Department of Veterans Affairs amends 38 CFR part 62 as follows:

**PART 62—SUPPORTIVE SERVICES FOR VETERAN FAMILIES PROGRAMS**

■ 1. The authority citation for part 62 continues to read as follows:

**Authority:** 38 U.S.C. 501, 2044, and as noted in specific sections.

■ 2. Amend § 62.2 by:

■ a. Removing the definition of “Emergency supplies”.

■ b. Adding the definitions of “Emergency housing”, “Extremely low-income veteran family”, “General housing stability assistance”, and “Rapid re-housing”, in alphabetical order.

■ c. Revising the definitions of “Homeless”, “Occupying permanent housing”, and “Permanent housing”.

The additions and revisions read as follows:

**§ 62.2 Definitions.**

\* \* \* \* \*

*Emergency housing* means temporary housing provided under § 62.34(f) that does not require the participant to sign a lease or occupancy agreement.

*Extremely low-income veteran family* means a veteran family whose annual income, as determined in accordance with 24 CFR 5.609, does not exceed 30 percent of the median income for an area or community.

*General housing stability assistance* means the provision of goods or payment of expenses that are directly related to supporting a participant’s housing stability and are authorized under § 62.34(e).

\* \* \* \* \*

*Homeless* has the meaning given that term in 24 CFR 576.2.

\* \* \* \* \*

*Occupying permanent housing* means meeting any of the conditions set forth in § 62.11.

\* \* \* \* \*

*Permanent housing* means community-based housing without a designated length of stay where an individual or family has a lease in accord with state and Federal law that is renewable and terminable only for cause. Examples of permanent housing include, but are not limited to, a house or apartment with a month-to-month or annual lease term or home ownership.

\* \* \* \* \*

*Rapid re-housing* means an intervention designed to help individuals and families quickly exit homelessness and return to permanent housing. Rapid re-housing assistance is offered without preconditions (such as employment, income, absence of criminal record, or sobriety) and the resources and services provided are typically tailored to the unique needs of the household. The three core components of rapid re-housing include housing identification, rent and move-in financial assistance, and rapid re-housing case management and services. While a rapid re-housing program must have all three core components available, it is not required that a single entity provide all three services nor that a household utilize them all.

\* \* \* \* \*

■ 3. Revise § 62.11 to read as follows:

**§ 62.11 Participants—occupying permanent housing.**

A very low-income veteran family will be considered to be occupying permanent housing if the very low-income veteran family:

(a) Is residing in permanent housing and at risk of becoming homeless, per conditions in paragraph (b)(1) of this section, but for the grantee’s assistance;

(b)(1) Is lacking a fixed, regular, and adequate nighttime residence, meaning:

(i) That the veteran family’s primary nighttime residence is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned bus or train station, airport, or camping ground;

(ii) That the veteran family is living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals); or

(iii) That the veteran family is exiting an institution where the veteran family resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) Are at risk to remain in the situation described in paragraph (b)(1) of this section but for the grantee's assistance; and

(3) Scheduled to become a resident of permanent housing within 90 days pending the location or development of housing suitable for permanent housing; or

(c) Has met any of the conditions described in paragraph (b)(1) of this section after exiting permanent housing within the previous 90 days to seek other housing that is responsive to the very low-income veteran family's needs and preferences.

**Note to paragraph (c):** For limitations on the provision of supportive services to participants classified under paragraph (c) of this section, see § 62.35.

(Authority: 38 U.S.C. 501, 2044)

■ 4. Amend § 62.20 by:

- a. Redesignating paragraphs (a)(2) through (7) as paragraphs (a)(3) through (8) respectively.
- b. Adding a new paragraph (a)(2).
- c. Adding a parenthetical at the end of the section.

The additions to read as follows:

**§ 62.20 Applications for supportive services grants.**

(a) \* \* \*

(2) A description of how the applicant will ensure that services are provided to very low-income veteran families for whom:

(i) No appropriate housing options have been identified for the veteran family; and

(ii) The veteran family lacks the financial resources and/or support networks to obtain or remain in permanent housing;

\* \* \* \* \*

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0757.)

■ 5. Amend § 62.22 by revising paragraph (b)(2)(i) to read as follows:

**§ 62.22 Scoring criteria for supporting services grant applicants.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) Applicant has a feasible outreach and referral plan to identify and assist very low-income veteran families occupying permanent housing that may be eligible for supportive services and are most in need of supportive services. The plan ensures that the applicant's program will assist very low-income families who also meet the requirements of § 62.20(a)(2).

\* \* \* \* \*

■ 6. Amend § 62.31 by:

- a. Revising the introductory text.
- b. In paragraph (d), removing the word "and".
- c. In paragraph (e), removing the period at the end of the paragraph and adding in its place "; and".
- d. Adding paragraph (f).

The revisions and additions read as follows:

**§ 62.31 Supportive service: Case management services.**

Grantees must provide case management services that prioritize housing stability as the primary goal of SSVF services and include, at a minimum:

\* \* \* \* \*

(f) Assisting participants in locating, obtaining, and retaining suitable permanent housing. Such activities may include: Identifying appropriate permanent housing and landlords willing to work with homeless veteran families; tenant counseling; mediation with landlords; and outreach to landlords.

\* \* \* \* \*

■ 7. Amend § 62.33 by:

- a. Revising paragraph (c).
- b. In paragraph (d)(3)(i), removing "\$1,000" and adding in its place "\$1,200".
- c. Revising paragraph (g).
- d. Revising paragraph (h) introductory text.
- e. Revising paragraph (h)(2)(i).

■ c. Revising paragraph (g).

■ d. Revising paragraph (h) introductory text.

■ e. Revising paragraph (h)(2)(i).

The revisions read as follows:

**§ 62.33 Supportive service: Assistance in obtaining and coordinating other public benefits.**

\* \* \* \* \*

(c) Personal financial planning services, which include, at a minimum, providing recommendations regarding day-to-day finances and achieving long-term budgeting and financial goals. SSVF funds may pay for credit counseling and other services necessary to assist participants with critical skills

related to household budgeting, managing money, accessing a free personal credit report, and resolving credit problems.

\* \* \* \* \*

(g) Legal services, including court filing fees, to assist a participant with issues that interfere with the participant's ability to obtain or retain permanent housing or supportive services, including issues that affect the participant's employability and financial security (such as the lack of a driver's license). However, SSVF funds may not be used to pay for court-ordered judgments or fines, pursuant to § 62.38.

(h) Child care for children under the age of 13, unless disabled. Disabled children must be under the age of 18. Child care includes the:

\* \* \* \* \*

(2) \* \* \*

(i) Payments for child care services must be paid by the grantee directly to an eligible child care provider and cannot exceed a maximum of 6 months in a 12-month period, and 10 months during a 2-year period, such period beginning on the date that the grantee first pays for child care services on behalf of the participant. For extremely low-income veteran families, payments for child care services on behalf of that participant cannot exceed 9 months in a 12-month period and 12 months during a 2-year period, such period beginning on the date that the grantee first pays for child care services on behalf of the participant.

\* \* \* \* \*

■ 8. Amend § 62.34 by:

- a. Revising paragraphs (a)(1), (b)(1), (c)(1) and (2), and (e).
- b. Redesignating paragraph (f) as paragraph (g).
- c. Adding a new paragraph (f).

The revisions and addition read as follows:

**§ 62.34 Other supportive services.**

\* \* \* \* \*

(a) \* \* \*

(1) A participant may receive rental assistance for a maximum of 10 months during a 2-year period (consecutive or nonconsecutive), such period beginning on the date that the grantee first pays rent on behalf of the participant; however, a participant cannot receive rental assistance for more than 6 months in any 12-month period beginning on the date that the grantee first pays rent on behalf of the participant. For extremely low-income veteran families, payments for rent cannot exceed 9 months in any 12-month period and 12 months during a 2-year period, such

period beginning on the date that the grantee first pays rent on behalf of the participant. The rental assistance may be for rental payments that are currently due or are in arrears, and for the payment of penalties or fees incurred by a participant and required to be paid by the participant under an existing lease or court order. In all instances, rental assistance may only be provided if the payment of such rental assistance will directly allow the participant to remain in permanent housing or obtain permanent housing.

\* \* \* \* \*

(b) \* \* \*

(1) A participant may receive payments for utilities for a maximum of 10 months during a 2-year period, such period beginning on the date that the grantee first pays utility fees on behalf of the participant; provided, however, that a participant cannot receive payments for utilities for more than 6 months in any 12-month period beginning on the date that the grantee first pays a utility payment on behalf of the participant. For extremely low-income veteran families, payments for utilities cannot exceed 9 months in any 12-month period and 12 months during a 2-year period, such periods beginning on the date that the grantee first pays a utility payment on behalf of the participant. The payment for utilities may be for utility payments that are currently due or are in arrears, provided that the payment of such utilities will allow the participant to remain in permanent housing or obtain permanent housing.

\* \* \* \* \*

(c) \* \* \*

(1) A participant may receive assistance with the payment of a security deposit a maximum of one time in every 2-year period, such period beginning on the date the grantee pays a security deposit on behalf of a participant.

(2) A participant may receive assistance with the payment of a utility deposit a maximum of one time in every 2-year period, such period beginning on the date the grantee pays a utility deposit on behalf of a participant.

\* \* \* \* \*

(e) *General housing stability assistance.* (1) A grantee may provide to a participant items necessary for a participant's life or safety on a temporary basis, in order to address a participant's emergency situation.

(2) A grantee may pay directly to a third party (and not to a participant), in an amount not to exceed \$1,500 per participant during any 2-year period, beginning on the date that the grantee

first submits a payment to a third party, the following types of expenses:

(i) Expenses associated with gaining or keeping employment, such as obtaining uniforms, tools, certifications, and licenses.

(ii) Expenses associated with moving into permanent housing, such as obtaining basic kitchen utensils, bedding, and other supplies.

(iii) Expenses necessary for securing appropriate permanent housing, such as fees for housing applications, housing inspections, or background checks.

(3) A grantee may pay directly to a third party (and not to a participant) a reasonable amount for a broker's fee when such a third party has assisted in identifying permanent housing. The reasonableness of a fee will be determined based on conditions in the local housing market.

(f) *Emergency housing assistance.* If permanent housing, appropriate shelter beds and transitional housing are not available and subsequent rental housing has been identified generally but is not immediately available for move-in by the participant, then a grantee may place a participant in emergency housing, subject to the following limitations:

(1) Placement for a single veteran may not exceed 72 hours, unless the grantee can certify that appropriate shelter beds and transitional housing are still unavailable at the end of the 72 hour period.

(2) Placement for a veteran and his or her spouse with dependent(s) may not exceed 45 days.

(3) A participant may be placed in emergency housing only once during any 2-year period, beginning on the date that the grantee first pays for emergency housing on behalf of the participant.

(4) Permanent housing will be available before the end of the period during which the participant is placed in emergency housing.

(5) The cost of the emergency housing must be reasonable in relation to the costs charged for other available emergency housing considering the location, quality, size, and type of the emergency housing.

\* \* \* \* \*

■ 9. Amend § 62.35 by:

■ a. Revising paragraph (a).

■ b. In paragraph (b), remove “§ 62.11(a)(3)” and add in its place “§ 62.11(c)” in all places it occurs.

■ c. Adding a new paragraph (e).

The revision and additions read as follows:

**§ 62.35 Limitations on and continuations of the provision of supportive services to certain participants.**

(a) *Extremely low-income veteran families.* A participant classified as an extremely low-income veteran family will retain that designation as long as the participant continues to meet all other eligibility requirements.

\* \* \* \* \*

(e) *Families fleeing domestic violence.*

Notwithstanding the limitations in § 62.34 concerning the maximum amount of assistance a family can receive during defined periods of time, a household may receive additional assistance if it otherwise qualifies for assistance under this Part and is fleeing from a domestic violence situation. A family may qualify for assistance even if the veteran is the aggressor or perpetrator of the domestic violence. Receipt of assistance under this provision resets the tolling period for the limitations on the maximum amount of support that can be provided in a given amount of time under § 62.34.

\* \* \* \* \*

■ 10. Amend § 62.36 by:

■ a. Revising paragraph (a).

■ b. Adding new paragraphs (f) and (g).

■ c. Adding a parenthetical at the end of the section.

The revision and additions read as follows:

**§ 62.36 General operation requirements.**

(a) *Eligibility documentation.* Prior to providing supportive services, grantees must verify and document each participant's eligibility for supportive services and classify the participant under one of the categories set forth in § 62.11. Grantees must recertify the participant's eligibility as a very low-income veteran family at least once every 3 months.

\* \* \* \* \*

(f) *Habitability standards.* (1) Grantees using supportive services grant funds to provide rental assistance, payments of utilities fees, security deposits, or utilities deposits, as set forth under § 62.34, on behalf of a participant moving into a new (different) housing unit will be required to conduct initial and any appropriate follow-up inspections of the housing unit into which the participant will be moving. Such inspections shall ensure that the housing unit meets the conditions set forth in 24 CFR 583.300(b) and do not require the use of a certified inspector. Inspections should occur no later than three (3) working days after the housing unit has been identified to the SSVF grantee, unless the Alternative Inspection Method is used to meet the requirements of this paragraph.

(2) *Alternative inspection method.* An inspection of a property will be valid for purposes of this paragraph if:

(i) The inspection was conducted pursuant to the requirements of a Federal, State, or local housing program (including, but not limited to, the Home investment partnership program under title II of the Cranston-Gonzalez National Affordable Housing Act or the low-income housing tax credit program under section 42 of the Internal Revenue Code of 1986);

(ii) If the inspection was not conducted pursuant to the requirements of a Federal housing program, the public housing agency has certified to the Secretary that such standard or requirement provides the same (or greater) protection to occupants of inspected dwelling units;

(iii) Pursuant to the inspection, the property was determined to meet the requirements regarding housing quality or safety applicable to properties assisted under such program; and

(iv) The inspection was conducted within the past 2 years.

(g) *Continuum of Care coordinated assessment.* Grantees must participate in the development, implementation, and ongoing operations of their local Continuum of Care's coordinated assessment system, or equivalent, as described in the McKinney-Vento Act, as amended by the HEARTH Act (42 U.S.C. 11302).

\* \* \* \* \*

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0757.)

■ 11. Add § 62.38 to read as follows:

**§ 62.38 Ineligible activities.**

Notwithstanding any other section in this part, grantees are not authorized to use supportive services grant funds to pay for the following:

(a) Mortgage costs or costs needed by homeowners to assist with any fees, taxes, or other costs of refinancing.

(b) Construction or rehabilitation of buildings.

(c) Home care and home health aides typically used to provide care in support of daily living activities. This includes care that is focused on treatment for an injury or illness, rehabilitation, or other assistance generally required to assist those with handicaps or other physical limitations.

(d) Credit card bills or other consumer debt.

(e) Medical or dental care and medicines.

(f) Direct cash assistance to participants.

(g) Court-ordered judgments or fines, except for those supported under § 62.34(a)(1).

(h) Pet care.

(i) Entertainment activities.

(Authority: 38 U.S.C. 501, 2044)

■ 12. Amend § 62.60 by adding a parenthetical at the end of the section to read as follows:

**§ 62.60 Program or budget changes and corrective action plans.**

\* \* \* \* \*

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0757.)

[FR Doc. 2015-03753 Filed 2-23-15; 8:45 am]

BILLING CODE 8320-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 60, 61, and 63**

[EPA-R06-OAR-2010-1054; FRL-9923-11-Region 6]

**New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Louisiana**

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

**ACTION:** Direct final rule; delegation of authority.

**SUMMARY:** The Louisiana Department of Environmental Quality (LDEQ) has submitted updated regulations for receiving delegation of Environmental Protection Agency (EPA) authority for implementation and enforcement of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources (both part 70 and non-part 70 sources). The delegation of authority under this action does not apply to sources located in Indian Country. EPA is providing notice that it is updating the delegation of certain NSPS to LDEQ, and taking direct final action to approve the delegation of certain NESHAPs to LDEQ.

**DATES:** This rule is effective on April 27, 2015 without further notice, unless EPA receives relevant adverse comment by March 26, 2015. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the updated NESHAPs delegation will not take effect; however, the NSPS delegation will not be affected by such action.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-

OAR-2007-0488, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

- **Email:** Mr. Rick Barrett at [barrett.richard@epa.gov](mailto:barrett.richard@epa.gov). Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- **Mail or delivery:** Mr. Rick Barrett, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

**Instructions:** Direct your comments to Docket No. EPA-R06-OAR-2007-0488. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through <http://www.regulations.gov> or email, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.  
**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Barrett, (214) 665-7227, [barrett.richard@epa.gov](mailto:barrett.richard@epa.gov). To inspect the hard copy materials, please schedule an appointment with Mr. Barrett or Mr. Bill Deese at (214) 665-7253.

**SUPPLEMENTARY INFORMATION:**

Throughout this document “we,” “us,” or “our” refers to EPA.

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- XIII. Final Action
- XIV. Statutory and Executive Order Reviews

**I. What does this action do?**

EPA is providing notice that it is delegating authority for implementation and enforcement of certain NSPS to LDEQ. EPA is also taking direct final action to approve the delegation of certain NESHAPs to LDEQ. With this delegation, LDEQ has the primary responsibility to implement and enforce the delegated standards.

**II. What is the authority for delegation?**

Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS standards are codified at 40 CFR part 60.

Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorizes EPA to delegate authority to any state or local agency which submits an adequate regulatory program for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63.

**III. What criteria must Louisiana’s programs meet to be approved?**

In order to receive delegation of NSPS, a state must develop and submit to the EPA a procedure for implementing and enforcing the NSPS in the state, and their regulations and resources must be adequate for the implementation and enforcement of the NSPS. EPA initially approved

Louisiana’s program for the delegation of NSPS on February 22, 1982 (47 FR 07665). EPA reviewed the laws of the State and the rules and regulations of the Louisiana Department of Natural Resources (now the LDEQ) and determined the State’s procedures, regulations and resources adequate for the implementation and enforcement of the NSPS program. This action notifies the public that EPA is updating LDEQ’s delegation to implement and enforce certain additional NSPS.

As to the NESHAP standards in 40 CFR parts 61 and 63, section 112(l)(5) of the CAA enables EPA to approve state air toxics programs or rules to operate in place of the Federal air toxics program or rules. 40 CFR part 63, subpart E governs EPA’s approval of State programs or rules under section 112(l).

EPA will approve the State’s submittal of a program for implementation and enforcement of the NESHAPs if we find that:

- (1) The State program is “no less stringent” than the corresponding Federal program or rule;
- (2) The State has adequate authority and resources to implement the program;
- (3) The schedule for implementation and compliance is sufficiently expeditious; and
- (4) The program otherwise complies with Federal guidance.

In order to obtain approval of its program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation), a State must demonstrate that it meets the approval criteria of 40 CFR 63.91(d). 40 CFR 63.91(d)(3) provides that interim or final Title V program approval will satisfy the criteria of 40 CFR 63.91(d) for part 70 sources (sources required to obtain operating permits pursuant to Title V of the Clean Air Act).

**IV. How did LDEQ meet the approval criteria?**

As to the NSPS standards in 40 CFR part 60, LDEQ adopted the Federal standards via incorporation by reference. The LDEQ regulations are, therefore, at least as stringent as EPA’s rules. See 40 CFR 60.10(a). Also, in the EPA initial approval of NSPS delegation, we determined that the State developed procedures for implementing and enforcing the NSPS in the State, and that the State’s regulations and resources are adequate for the implementation and enforcement of the NSPS program. See 47 FR 07665 (February 22, 1982).

As to the NESHAP standards in 40 CFR parts 61 and 63, as part of its Title V submission LDEQ stated that it intended to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 standards into its regulations. This commitment applied to both existing and future standards as they applied to part 70 sources. EPA’s final interim approval of Louisiana’s Title V operating permits program delegated the authority to implement certain NESHAPs to the State. See 60 FR 17750 (April 7, 1995). EPA promulgated final full approval of the State’s operating permits program on September 12, 1995. See 60 FR 42296. These interim and final title V program approvals satisfy the upfront approval criteria of 40 CFR 63.91(d). Under 40 CFR 63.91(d)(2), once a state has satisfied the up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent submittals for delegation of the section 112 standards. LDEQ has affirmed that it still meets the up-front approval criteria.

**V. What is being delegated?**

By letter dated November 30, 2010, EPA received a request from Louisiana to update LDEQ’s NSPS delegation and NESHAPs delegation. With certain exceptions noted in section VI below, LDEQ’s request included NSPS in 40 CFR part 60, and NESHAPs in 40 CFR part 61 and 63, as amended between July 2, 2008 and July 1, 2009.

By letter dated May 28, 2013, EPA received a second request from Louisiana to update LDEQ’s NSPS delegation. Louisiana’s request only included NSPS in 40 CFR part 60, subpart OOOO, Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution, as promulgated by EPA on August 16, 2012 (77 FR 49490).

By letter dated June 21, 2013, EPA received a third request from Louisiana to update LDEQ’s NSPS delegation and NESHAPs delegation. With certain exceptions noted in section VI below, Louisiana’s request included NSPS in 40 CFR part 60, and NESHAPs in 40 CFR parts 61 and 63, as amended between July 2, 2009 and July 1, 2012.

By letter dated August 28, 2014, EPA received a fourth request from Louisiana to update LDEQ’s NSPS delegation and NESHAPs delegation. With certain exceptions noted in section VI below, Louisiana’s request included NSPS in 40 CFR part 60, and NESHAPs in 40 CFR part 61 and 63, as amended between July 2, 2012 and July 1, 2013.



## VI. What is not being delegated?

The following part 60, 61 and 63 authorities listed below are not delegated. All of the inquiries and requests concerning implementation and enforcement of the excluded standards in the State of Louisiana should be directed to the EPA Region 6 Office.

- 40 CFR part 60, subpart AAA (Standards of Performance for New Residential Wood Heaters);
- 40 CFR part 61, subpart B (National Emission Standards for Radon Emissions from Underground Uranium Mines);
- 40 CFR part 61, subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities);
- 40 CFR part 61, subpart I (National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H);
- 40 CFR part 61, subpart K (National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants);
- 40 CFR part 61, subpart Q (National Emission Standards for Radon Emissions from Department of Energy facilities);
- 40 CFR part 61, subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks);
- 40 CFR part 61, subpart T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings); and
- 40 CFR part 61, subpart W (National Emission Standards for Radon Emissions from Operating Mill Tailings).

In addition, EPA cannot delegate to a State any of the Category II Subpart A authorities set forth in 40 CFR 63.91(g)(2). These include the following provisions: § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. Also, some Part 63 standards have certain provisions that cannot be delegated to the States. Therefore, any Part 63 standard that EPA is delegating to LDEQ that provides that certain authorities cannot be delegated are retained by EPA and not delegated. Furthermore, no authorities are delegated that require rulemaking in the

**Federal Register** to implement, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. Finally, section 112(r), the accidental release program authority, is not being delegated by this approval.

In addition, this delegation to LDEQ to implement and enforce certain NSPS and NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Under this definition, EPA treats as reservations, trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous federal program approvals or delegations, EPA will continue to implement the NSPS and NESHAPs in Indian country because LDEQ has not submitted information to demonstrate authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

## VII. How will applicability determinations be made?

In approving the NSPS delegation, LDEQ will obtain concurrence from EPA on any matter involving the interpretation of section 111 of the CAA or 40 CFR part 60 to the extent that application, implementation, administration, or enforcement of these provisions have not been covered by prior EPA determinations or guidance. See 47 FR 07665 (February 22, 1982).

In approving the NESHAPs delegation, LDEQ will obtain concurrence from EPA on any matter involving the interpretation of section 112 of the CAA or 40 CFR parts 61 and 63 to the extent that application, implementation, administration, or enforcement of these provisions have not been covered by prior EPA determinations or guidance.

## VIII. What authority does EPA have?

We retain the right, as provided by CAA section 111(c)(2), to enforce any applicable emission standard or requirement under section 111.

We retain the right, as provided by CAA section 112(l)(7), to enforce any applicable emission standard or requirement under section 112. EPA also has the authority to make certain decisions under the General Provisions (subpart A) of part 63. We are granting LDEQ some of these authorities, and retaining others, as explained in sections V and VI above. In addition, EPA may review and disapprove State determinations and subsequently require corrections. (See 40 CFR

63.91(g) and 65 FR 55810, 55823, September 14, 2000, as amended at 70 FR 59887, October 13, 2005; 72 FR 27443, May 16, 2007.)

Furthermore, we retain any authority in an individual emission standard that may not be delegated according to provisions of the standard. Also, listed in the footnotes of the part 63 delegation table at the end of this rule are the authorities that cannot be delegated to any State or local agency which we therefore retain.

Finally, we retain the authorities stated in the original delegation agreement. See 47 FR 07665 (February 22, 1982).

## IX. What information must LDEQ provide to EPA?

Under 40 CFR 60.4(b), all notifications under NSPS must be sent to both EPA and to LDEQ. Please send notifications and reports to Chief, Air/Toxics Inspection and Coordination Branch at the EPA Region 6 office.

LDEQ must provide any additional compliance related information to EPA, Region 6, Office of Enforcement and Compliance Assurance, within 45 days of a request under 40 CFR 63.96(a). In receiving delegation for specific General Provisions authorities, LDEQ must submit to EPA Region 6, on a semi-annual basis, copies of determinations issued under these authorities. For 40 CFR parts 61 and 63 standards, these determinations include: Section 63.1, Applicability Determinations; Section 63.6(e), Operation and Maintenance Requirements—Responsibility for Determining Compliance; Section 63.6(f), Compliance with Non-Opacity Standards—Responsibility for Determining Compliance; Section 63.6(h), Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance; Sections 63.7(c)(2)(i) and (d), Approval of Site-Specific Test Plans; Section 63.7(e)(2)(i), Approval of Minor Alternatives to Test Methods; Section 63.7(e)(2)(ii) and (f), Approval of Intermediate Alternatives to Test Methods; Section 63.7(e)(iii), Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors; Sections 63.7(e)(2)(iv), (h)(2), and (h)(3), Waiver of Performance Testing; Sections 63.8(c)(1) and (e)(1), Approval of Site-Specific Performance Evaluation (Monitoring) Test Plans; Section 63.8(f), Approval of Minor Alternatives to Monitoring; Section 63.8(f), Approval of Intermediate Alternatives to Monitoring; Section 63.9 and 63.10, Approval of Adjustments to Time Periods for Submitting Reports; Section 63.10(f), Approval of Minor

Alternatives to Recordkeeping and Reporting; Section 63.7(a)(4), Extension of Performance Test Deadline.

#### X. What is EPA's oversight role?

EPA must oversee LDEQ's decisions to ensure the delegated authorities are being adequately implemented and enforced. We will integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place. If, during oversight, we determine that LDEQ made decisions that decreased the stringency of the delegated standards, then LDEQ shall be required to take corrective actions and the source(s) affected by the decisions will be notified, as required by 40 CFR 63.91(g)(1)(ii). We will initiate withdrawal of the program or rule if the corrective actions taken are insufficient. Also see 47 FR 07665 (February 22, 1982).

#### XI. Should sources submit notices to EPA or LDEQ?

All of the information required pursuant to the Federal NSPS and NESHAPs (40 CFR parts 60, 61 and 63) should be submitted by sources located outside of Indian country directly to the LDEQ at the following address: Louisiana Department of Environmental Quality, PO Box 4301, Baton Rouge, Louisiana 70821-4301. The LDEQ is the primary point of contact with respect to delegated NSPS and NESHAPs. Sources do not need to send a copy to EPA. EPA Region 6 waives the requirement that notifications and reports for delegated standards be submitted to EPA in addition to LDEQ, in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii). Also, see 51 FR 20648 (June 6, 1986). For those standards that are not delegated, sources must continue to submit all appropriate information to EPA.

#### XII. How will unchanged authorities be delegated to LDEQ in the future?

In the future, LDEQ will only need to send a letter of request to update their delegation to EPA, Region 6, for those NSPS which they have adopted by reference. EPA will amend the relevant portions of the Code of Federal Regulations showing which NSPS standards have been delegated to LDEQ. Also, in the future, LDEQ will only need to send a letter of request for approval to EPA, Region 6, for those NESHAPs regulations that LDEQ has adopted by reference. The letter must reference the previous up-front approval demonstration and reaffirm that it still meets the up-front approval criteria. We will respond in writing to the request

stating that the request for delegation is either granted or denied. A **Federal Register** action will be published to inform the public and affected sources of the delegation, indicate where source notifications and reports should be sent, and to amend the relevant portions of the Code of Federal Regulations showing which NESHAP standards have been delegated to LDEQ.

#### XIII. Final Action

The public was provided the opportunity to comment on the proposed approval of the program and mechanism for delegation of section 112 standards, as they apply to part 70 sources, on August 24, 1994, for the proposed interim approval of LDEQ's Title V operating permits program; and on April 7, 1995, for the proposed final approval of LDEQ's Title V operating permits program. In EPA's final full approval of Louisiana's Operating Permits Program (60 FR 47296), the EPA discussed the public comments on the proposed final delegation of the Title V operating permits program. In today's action, the public is given the opportunity to comment on the approval of LDEQ's request for delegation of authority to implement and enforce certain section 112 standards for all sources (both part 70 and non-part 70 sources) which have been adopted by reference into Louisiana's state regulations. However, the Agency views the approval of these requests as a noncontroversial action and anticipates no adverse comments. Therefore, EPA is publishing this rule without prior proposal. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the program and NESHAPs delegation of authority described in this action if adverse comments are received. This action will be effective April 27, 2015 without further notice unless the Agency receives relevant adverse comments by March 26, 2015.

If EPA receives relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public the rule will not take effect with respect to the updated NESHAPs delegation. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule,

we may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

#### XIV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is 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). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the delegation is not approved to apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state request to receive delegation of certain Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing delegation submissions, EPA's role is to approve submissions, provided that they meet the criteria of the Clean Air Act. In this context, in the

absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a delegation submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA to use VCS in place of a delegation submission that otherwise satisfies the provisions of the Clean Air Act. 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. This rule does not impose an information collection burden under the provisions of 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. 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).

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 *April 27, 2015*.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects**

*40 CFR Part 60*

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

*40 CFR Part 61*

Environmental protection, Administrative practice and procedure, Air pollution control, Arsenic, Benzene, Beryllium, Hazardous substances, Mercury, Intergovernmental relations, Reporting and recordkeeping requirements, Vinyl chloride.

*40 CFR Part 63*

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 28, 2015.

**Samuel Coleman,**

*Acting Regional Administrator, Region 6.*

For the reasons stated in the preamble, 40 CFR parts 60, 61, and 63 are amended as follows:

**PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES**

■ 1. The authority citation for part 60 continues to read as follows:

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

**Subpart A—General Provisions**

■ 2. Section 60.4 is amended by revising paragraphs (b)(T) and (e)(2) to read as follows:

**§ 60.4 Address.**

\* \* \* \* \*

(b) \* \* \*

(T) State of Louisiana: Louisiana Department of Environmental Quality, P.O. Box 4301, Baton Rouge, Louisiana 70821–4301.

**Note:** For a list of delegated standards for Louisiana (excluding Indian country), see paragraph (e)(2) of this section.

\* \* \* \* \*

(e) \* \* \*

(2) *Louisiana.* The Louisiana Department of Environmental Quality has been delegated all part 60 standards promulgated by EPA, except subpart AAA—Standards of Performance for New Residential Wood Heaters, as amended in the **Federal Register** through July 1, 2013.

**DELEGATION STATUS FOR PART 60 STANDARDS—STATE OF LOUISIANA**  
[Excluding Indian Country]

Subpart	Source category	LDEQ <sup>1</sup>
A	General Provisions	Yes
Ce	Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators	Yes
D	Fossil Fueled Steam Generators (>250 MM BTU/hr)	Yes
Da	Electric Utility Steam Generating Units (>250 MM BTU/hr)	Yes
Db	Industrial-Commercial-Institutional Steam Generating Units (100 to 250 MM BTU/hr)	Yes
Dc	Industrial-Commercial-Institutional Small Steam Generating Units (10 to 100 MM BTU/hr)	Yes
E	Incinerators (>50 tons per day)	Yes
Ea	Municipal Waste Combustors	Yes
Eb	Large Municipal Waste Combustors	Yes
Ec	Hospital/Medical/Infectious Waste Incinerators	Yes
F	Portland Cement Plants	Yes
G	Nitric Acid Plants	Yes
Ga	Nitric Acid Plants (after October 14, 2011)	Yes
H	Sulfuric Acid Plants	Yes
I	Hot Mix Asphalt Facilities	Yes
J	Petroleum Refineries	Yes
Ja	Petroleum Refineries (After May 14, 2007)	Yes
K	Storage Vessels for Petroleum Liquids (After 6/11/73 & Before 5/19/78)	Yes
Ka	Storage Vessels for Petroleum Liquids (After 6/11/73 & Before 5/19/78)	Yes
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Stg/Vessels) After 7/23/84	Yes
L	Secondary Lead Smelters Yes	Yes
M	Secondary Brass and Bronze Production Plants	Yes
N	Primary Emissions from Basic Oxygen Process Furnaces (Construction Commenced After June 11, 1973)	Yes

DELEGATION STATUS FOR PART 60 STANDARDS—STATE OF LOUISIANA—Continued  
[Excluding Indian Country]

Subpart	Source category	LDEQ <sup>1</sup>
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities Construction is Commenced After January 20, 1983.	Yes
O	Sewage Treatment Plants	Yes
P	Primary Copper Smelters	Yes
Q	Primary Zinc Smelters	Yes
R	Primary Lead Smelters	Yes
S	Primary Aluminum Reduction Plants	Yes
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Plants	Yes
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	Yes
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	Yes
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	Yes
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities	Yes
Y	Coal Preparation Plants	Yes
Z	Ferroalloy Production Facilities	Yes
AA	Steel Plants: Electric Arc Furnaces After 10/21/74 & On or Before 8/17/83	Yes
AAa	Steel Plants: Electric Arc Furnaces & Argon-Oxygen Decarburization Vessels After 8/07/83	Yes
BB	Kraft Pulp Mills	Yes
CC	Glass Manufacturing Plants	Yes
DD	Grain Elevators	Yes
EE	Surface Coating of Metal Furniture	Yes
GG	Stationary Gas Turbines	Yes
HH	Lime Manufacturing Plants	Yes
KK	Lead-Acid Battery Manufacturing Plants	Yes
LL	Metallic Mineral Processing Plants	Yes
MM	Automobile & Light Duty Truck Surface Coating Operations	Yes
NN	Phosphate Manufacturing Plants	Yes
PP	Ammonium Sulfate Manufacture	Yes
QQ	Graphic Arts Industry: Publication Rotogravure Printing	Yes
RR	Pressure Sensitive Tape and Label Surface Coating Operations	Yes
SS	Industrial Surface Coating: Large Appliances	Yes
TT	Metal Coil Surface Coating	Yes
UU	Asphalt Processing and Asphalt Roofing Manufacture	Yes
VV	VOC Equipment Leaks in the SOCOMI Industry	Yes
VVa	VOC Equipment Leaks in the SOCOMI Industry (After November 7, 2006)	Yes
XX	Bulk Gasoline Terminals	Yes
AAA	New Residential Wood Heaters	No
BBB	Rubber Tire Manufacturing Industry	Yes
DDD	Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry	Yes
FFF	Flexible Vinyl and Urethane Coating and Printing	Yes
GGG	VOC Equipment Leaks in Petroleum Refineries	Yes
HHH	Synthetic Fiber Production	Yes
III	VOC Emissions from the SOCOMI Air Oxidation Unit Processes	Yes
JJJ	Petroleum Dry Cleaners	Yes
KKK	VOC Equipment Leaks From Onshore Natural Gas Processing Plants	Yes
LLL	Onshore Natural Gas Processing: SO <sub>2</sub> Emissions	Yes
NNN	VOC Emissions from SOCOMI Distillation Operations	Yes
OOO	Nonmetallic Mineral Processing Plants	Yes
PPP	Wool Fiberglass Insulation Manufacturing Plants	Yes
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	Yes
RRR	VOC Emissions from SOCOMI Reactor Processes	Yes
SSS	Magnetic Tape Coating Operations	Yes
TTT	Industrial Surface Coating: Plastic Parts for Business Machines	Yes
UUU	Calciners and Dryers in Mineral Industries	Yes
VVV	Polymeric Coating of Supporting Substrates Facilities	Yes
WWW	Municipal Solid Waste Landfills	Yes
AAAA	Small Municipal Waste Combustion Units (Construction is Commenced After 8/30/99 or Modification/Reconstruction is Commenced After 6/06/2001).	Yes
CCCC	Commercial & Industrial Solid Waste Incineration Units (Construction is Commenced After 11/30/1999 or Modification/Reconstruction is Commenced on or After 6/01/2001).	Yes
DDDD	Emission Guidelines & Compliance Times for Commercial & Industrial Solid Waste Incineration Units (Commenced Construction On or Before 11/30/1999).	Yes
EEEE	Other Solid Waste Incineration Units (Constructed after 12/09/2004 or Modification/Reconstruction is commenced on or after 06/16/2004).	Yes
IIII	Stationary Compression Ignition Internal Combustion Engines	Yes
JJJJ	Stationary Spark Ignition Internal Combustion Engines	Yes
KKKK	Stationary Combustion Turbines (Construction Commenced After 02/18/2005)	Yes
LLLL	New Sewage Sludge Incineration Units	Yes
MMMM	Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units	Yes
OOOO	Crude Oil and Natural Gas Production, Transmission and Distribution	Yes

<sup>1</sup> The Louisiana Department of Environmental Quality (LDEQ) has been delegated all Part 60 standards promulgated by EPA, except subpart AAA—Standards of Performance for New Residential Wood Heaters—as amended in the **Federal Register** through July 1, 2013.

\* \* \* \* \*

**PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

■ 3. The authority citation for part 61 continues to read as follows:

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

**Subpart A—General Provisions**

■ 4. Section 61.04 is amended by revising paragraph (c)(6)(ii) to read as follows:

**§ 61.04 Address.**

\* \* \* \* \*  
(c) \* \* \*

(6) \* \* \*

(ii) *Louisiana*. The Louisiana Department of Environmental Quality (LDEQ) has been delegated the following part 61 standards promulgated by EPA, as amended in the **Federal Register** through July 1, 2013. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR PART 61 STANDARDS—STATE OF LOUISIANA  
[Excluding Indian Country]

Subpart	Source category	LDEQ <sup>1</sup>
A	General Provisions	X
B	Radon Emissions From Underground Uranium Mines	
C	Beryllium	X
D	Beryllium Rocket Motor Firing	X
E	Mercury	X
F	Vinyl Chloride	X
G	(Reserved)	
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities	
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.	
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X
K	Radionuclide Emissions From Elemental Phosphorus Plants	
L	Benzene Emissions From Coke By-Product Recovery Plants	X
M	Asbestos	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities	X
Q	Radon Emissions From Department of Energy Facilities	
R	Radon Emissions From Phosphogypsum Stacks	
S	(Reserved)	
T	Radon Emissions From the Disposal of Uranium Mill Tailings	
U	(Reserved)	
V	Equipment Leaks (Fugitives Emission Sources)	X
W	Radon Emissions From Operating Mill Tailings	
X	(Reserved)	
Y	Benzene Emissions From Benzene Storage Vessels	X
Z-AA	(Reserved)	
BB	Benzene Emissions From Benzene Transfer Operations	X
CC-EE	(Reserved)	
FF	Benzene Waste Operations	X

<sup>1</sup> Program delegated to Louisiana Department of Environmental Quality (LDEQ).

\* \* \* \* \*

**PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES**

■ 5. The authority citation for part 63 continues to read as follows:

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

**Subpart E—Approval of State Programs and Delegation of Federal Authorities**

■ 6. Section 63.99 is amended by revising paragraph (a)(19)(i) to read as follows:

**§ 63.99 Delegated Federal authorities.**

(a) \* \* \*  
(19) \* \* \*  
(i) The following table lists the specific part 63 standards that have been delegated unchanged to the

Louisiana Department of Environmental Quality for all sources. The “X” symbol is used to indicate each subpart that has been delegated. The delegations are subject to all of the conditions and limitations set forth in Federal law, regulations, policy, guidance, and determinations. Some authorities cannot be delegated and are retained by EPA. These include certain General Provisions authorities and specific parts of some standards. Any amendments made to these rules after July 1, 2013, are not delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF LOUISIANA  
[Excluding Indian Country]

Subpart	Source category	LDEQ <sup>1 2</sup>
A	General Provisions	X
D	Early Reductions	X
F	Hazardous Organic NESHP (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI)	X
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater	X

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF LOUISIANA—Continued  
[Excluding Indian Country]

Subpart	Source category	LDEQ <sup>1 2</sup>
H	HON—Equipment Leaks	X
I	HON—Certain Processes Negotiated Equipment Leak Regulation	X
J	Polyvinyl Chloride and Copolymers Production	( <sup>3</sup> )
K	(Reserved)	
L	Coke Oven Batteries	X
M	Perchloroethylene Dry Cleaning	X
N	Chromium Electroplating and Chromium Anodizing Tanks	X
O	Ethylene Oxide Sterilizers	X
P	(Reserved)	
Q	Industrial Process Cooling Towers	X
R	Gasoline Distribution	X
S	Pulp and Paper Industry	X
T	Halogenated Solvent Cleaning	X
U	Group I Polymers and Resins	X
V	(Reserved)	
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X
X	Secondary Lead Smelting	X
Y	Marine Tank Vessel Loading	X
Z	(Reserved)	
AA	Phosphoric Acid Manufacturing Plants	X
BB	Phosphate Fertilizers Production Plants	X
CC	Petroleum Refineries	X
DD	Off-Site Waste and Recovery Operations	X
EE	Magnetic Tape Manufacturing	X
FF	(Reserved)	
GG	Aerospace Manufacturing and Rework Facilities	X
HH	Oil and Natural Gas Production Facilities	X
II	Shipbuilding and Ship Repair Facilities	X
JJ	Wood Furniture Manufacturing Operations	X
KK	Printing and Publishing Industry	X
LL	Primary Aluminum Reduction Plants	X
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills.	X
NN	(Reserved)	
OO	Tanks-Level 1	X
PP	Containers	X
QQ	Surface Impoundments	X
RR	Individual Drain Systems	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X
TT	Equipment Leaks—Control Level 1	X
UU	Equipment Leaks—Control Level 2 Standards	X
VV	Oil—Water Separators and Organic—Water Separators	X
WW	Storage Vessels (Tanks)—Control Level 2	X
XX	Ethylene Manufacturing Process Units Heat Exchange Systems and Waste Operations	X
YY	Generic Maximum Achievable Control Technology Standards	X
ZZ—BBB	(Reserved)	
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration	X
DDD	Mineral Wool Production	X
EEE	Hazardous Waste Combustors	X
FFF	(Reserved)	
GGG	Pharmaceuticals Production	X
HHH	Natural Gas Transmission and Storage Facilities	X
III	Flexible Polyurethane Foam Production	X
JJJ	Group IV Polymers and Resins	X
KKK	(Reserved)	
LLL	Portland Cement Manufacturing	X
MMM	Pesticide Active Ingredient Production	X
NNN	Wool Fiberglass Manufacturing	X
OOO	Amino/Phenolic Resins	X
PPP	Polyether Polyols Production	X
QQQ	Primary Copper Smelting	X
RRR	Secondary Aluminum Production	X
SSS	(Reserved)	
TTT	Primary Lead Smelting	X
UUU	Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants	X
VVV	Publicly Owned Treatment Works (POTW)	X
WWW	(Reserved)	
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese	X
AAAA	Municipal Solid Waste Landfills	X
CCCC	Nutritional Yeast Manufacturing	X

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF LOUISIANA—Continued  
[Excluding Indian Country]

Subpart	Source category	LDEQ <sup>1 2</sup>
DDDD	Plywood and Composite Wood Products	4 X
EEEE	°Organic Liquids Distribution	X
FFFF	Misc. Organic Chemical Production and Processes (MON)	X
GGGG	Solvent Extraction for Vegetable Oil Production	X
HHHH	Wet Formed Fiberglass Mat Production	X
IIII	Auto & Light Duty Truck (Surface Coating)	X
JJJJ	Paper and other Web (Surface Coating)	X
KKKK	Metal Can (Surface Coating)	X
MMMM	Misc. Metal Parts and Products (Surface Coating)	X
NNNN	Surface Coating of Large Appliances	X
OOOO	Fabric Printing Coating and Dyeing	X
PPPP	Plastic Parts (Surface Coating)	X
QQQQ	Surface Coating of Wood Building Products	X
RRRR	Surface Coating of Metal Furniture	X
SSSS	Surface Coating for Metal Coil	X
TTTT	Leather Finishing Operations	X
UUUU	Cellulose Production Manufacture	X
VVVV	Boat Manufacturing	X
WWWW	Reinforced Plastic Composites Production	X
XXXX	Rubber Tire Manufacturing	X
YYYY	Combustion Turbines	X
ZZZZ	Reciprocating Internal Combustion Engines (RICE)	X
AAAAA	Lime Manufacturing Plants	X
BBBBB	Semiconductor Manufacturing	X
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks	X
DDDDD	Industrial/Commercial/Institutional Boilers and Process Heaters	5 X
EEEEE	Iron Foundries	X
FFFFF	Integrated Iron and Steel	X
GGGGG	Site Remediation	X
HHHHH	Miscellaneous Coating Manufacturing	X
IIIII	Mercury Cell Chlor-Alkali Plants	X
JJJJJ	Brick and Structural Clay Products Manufacturing	(6)
KKKKK	Clay Ceramics Manufacturing	(6)
LLLLL	Asphalt Roofing and Processing	X
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X
NNNNN	Hydrochloric Acid Production, Fumed Silica Production	X
OOOOO	(Reserved)	.....
PPPPP	Engine Test Facilities	X
QQQQQ	Friction Products Manufacturing	X
RRRRR	Taconite Iron Ore Processing	X
SSSSS	Refractory Products Manufacture	X
TTTTT	Primary Magnesium Refining	X
UUUUU	Coal and Oil-Fired Electric Utility Steam Generating Units	7 X
VVVVV	(Reserved)	.....
WWWWW	Hospital Ethylene Oxide Sterilizers	X
XXXXX	(Reserved)	.....
YYYYY	Electric Arc Furnace Steelmaking Area Sources	X
ZZZZZ	Iron and Steel Foundries Area Sources	X
AAAAA	(Reserved)	.....
BBBBB	Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities	X
CCCCC	Gasoline Dispensing Facilities	X
DDDDD	Polyvinyl Chloride and Copolymers Production Area Sources	X
EEEEE	Primary Copper Smelting Area Sources	X
FFFFF	Secondary Copper Smelting Area Sources	X
GGGGG	Primary Nonferrous Metals Area Source: Zinc, Cadmium, and Beryllium	X
HHHHH	Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources	X
IIIII	(Reserved)	.....
JJJJJ	Industrial, Commercial, and Institutional Boilers Area Sources	X
KKKKK	(Reserved)	.....
LLLLL	Acrylic and Modacrylic Fibers Production Area Sources	X
MMMMM	Carbon Black Production Area Sources	X
NNNNN	Chemical Manufacturing Area Sources: Chromium Compounds	X
OOOOO	Flexible Polyurethane Foam Production and Fabrication Area Sources	X
PPPPP	Lead Acid Battery Manufacturing Area Sources	X
QQQQQ	Wood Preserving Area Sources	X
RRRRR	Clay Ceramics Manufacturing Area Sources	X
SSSSS	Glass Manufacturing Area Sources	X
TTTTT	Secondary Nonferrous Metals Processing Area Sources	X
UUUUU	(Reserved)	.....
VVVVV	Chemical Manufacturing Area Sources	X
WWWWW	Plating and Polishing Operations Area Sources	X

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF LOUISIANA—Continued  
[Excluding Indian Country]

Subpart	Source category	LDEQ <sup>1 2</sup>
XXXXXX .....	Metal Fabrication and Finishing Area Sources .....	X
YYYYYY .....	Ferroalloys Production Facilities Area Sources .....	X
ZZZZZZ .....	Aluminum, Copper, and Other Nonferrous Foundries Area Sources .....	X
AAAAAAA .....	Asphalt Processing and Asphalt Roofing Manufacturing Area Sources .....	X
BBBBBBB .....	Chemical Preparation Industry Area Sources .....	X
CCCCCCC .....	Paints and Allied Products Manufacturing Area Sources .....	X
DDDDDDD .....	Prepared Feeds Areas Sources .....	X
EEEEEEE .....	Gold Mine Ore Processing and Production Area Sources .....	X
FFFFFFF— GGGGGGG.	(Reserved) .....	
HHHHHHH .....	Polyvinyl Chloride and Copolymers Production Major Sources .....	X

<sup>1</sup> Authorities which may not be delegated include: § 63.6(g), Approval of Alternative Non-Opacity Emission Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting; and all authorities identified in the subparts (e.g., under “Delegation of Authority”) that cannot be delegated.

<sup>2</sup> Program delegated to Louisiana Department of Environmental Quality (LDEQ) for standards promulgated by EPA, as amended in the **Federal Register** through July 1, 2013.

<sup>3</sup> The LDEQ was previously delegated this subpart on March 26, 2004 (69 FR 15687). The LDEQ has adopted the subpart unchanged and applied for delegation of the standard. The subpart was vacated and remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit. See, *Mossville Environmental Action Network v. EPA*, 370 F. 3d 1232 (D.C. Cir. 2004). Because of the D.C. Court’s holding this subpart is not delegated to LDEQ at this time.

<sup>4</sup> This subpart was issued a partial vacatur on October 29, 2007 (72 FR 61060) by the United States Court of Appeals for the District of Columbia Circuit.

<sup>5</sup> Final rule. See 78 FR 7138 (January 31, 2013).

<sup>6</sup> This subpart was vacated and remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit on March 13, 2007. See, *Sierra Club v. EPA*, 479 F. 3d 875 (D.C. Cir. 2007). Because of the D.C. Court’s holding this subpart is not delegated to LDEQ at this time.

<sup>7</sup> Initial Final Rule on February 16, 2012 (77 FR 9304). Final on reconsideration of certain new source issues on April 24, 2013 (78 FR 24073). Portions of this subpart are in proposed reconsideration pending final action on June 25, 2013 (78 FR 38001).

\* \* \* \* \*

[FR Doc. 2015–03730 Filed 2–23–15; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 61 and 63**

[EPA–R06–OAR–2008–0063; FRL–9923–22–Region 6]

**National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Oklahoma**

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

**ACTION:** Direct final rule; delegation of authority.

**SUMMARY:** The Oklahoma Department of Environmental Quality (ODEQ) has submitted updated regulations for receiving delegation of Environmental Protection Agency (EPA) authority for implementation and enforcement of National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources (both part 70 and non-part 70 sources). The delegation of authority under this action does not apply to sources located in Indian Country. EPA is taking direct final action to approve the delegation of certain NESHAPs to ODEQ.

**DATES:** This rule is effective on April 27, 2015 without further notice, unless EPA receives relevant adverse comment by March 26, 2015. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the updated NESHAPs delegation will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R06–OAR–2008–0063, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.
- Email: Mr. Rick Barrett at [barrett.richard@epa.gov](mailto:barrett.richard@epa.gov). Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Mail or delivery: Mr. Rick Barrett, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

**Instructions:** Direct your comments to Docket No. EPA–R06–OAR–2008–0063. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Do not submit information through <http://www.regulations.gov> or email, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD–ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy



at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Barrett (6PD-R), (214) 665-7227, [barrett.richard@epa.gov](mailto:barrett.richard@epa.gov). To inspect the hard copy materials, please schedule an appointment with Mr. Barrett or Mr. Bill Deese at (214) 665-7253.

**SUPPLEMENTARY INFORMATION:**

Throughout this document “we,” “us,” and “our” refers to EPA.

**Table of Contents**

- I. What does this action do?
- II. What is the authority for delegation?
- III. What criteria must Oklahoma’s programs meet to be approved?
- IV. How did ODEQ meet the approval criteria?
- V. What is being delegated?
- VI. What is not being delegated?
- VII. How will applicability determinations be made?
- VIII. What authority does EPA have?
- IX. What information must ODEQ provide to EPA?
- X. What is EPA’s oversight role?
- XI. Should sources submit notices to EPA or ODEQ?
- XII. How will unchanged authorities be delegated to ODEQ in the future?
- XIII. Final Action
- XIV. Statutory and Executive Order Reviews

**I. What does this action do?**

EPA is taking direct final action to approve the delegation of certain NESHAPs to ODEQ. With this delegation, ODEQ has the primary responsibility to implement and enforce the delegated standards.

**II. What is the authority for delegation?**

Section 112(l) of the CAA, and 40 CFR part 63, subpart E, authorize EPA to delegate authority to any State or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63.

**III. What criteria must Oklahoma’s program meet to be approved?**

Section 112(l)(5) of the CAA enables EPA to approve state air toxics programs or rules to operate in place of the Federal air toxics program or rules. 40 CFR part 63, subpart E governs EPA’s approval of State rules or programs under section 112(l).

EPA will approve an air toxics program if we find that:

(1) The State program is “no less stringent” than the corresponding Federal program or rule;

(2) The State has adequate authority and resources to implement the program;

(3) The schedule for implementation and compliance is sufficiently expeditious; and

(4) The program otherwise complies with Federal guidance.

In order to obtain approval of its program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation), a state must demonstrate that it meets the approval criteria of 40 CFR 63.91(d). 40 CFR 63.91(d)(3) provides that interim or final Title V program approval will satisfy the criteria of 40 CFR 63.91(d) for part 70 sources (sources required to obtain operating permits pursuant to Title V of the Clean Air Act).

**IV. How did ODEQ meet the NESHAPs program approval criteria?**

As to the NESHAPs standards in 40 CFR parts 61 and 63, as part of its Title V submission ODEQ stated that it intended to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 into its regulations. This commitment applied to both existing and future standards as they applied to part 70 sources. EPA’s final interim approval of Oklahoma’s Title V operating permits program delegated the authority to implement certain NESHAPs on February 5, 1996 (61 FR 4220). On December 5, 2001, EPA granted final full approval of the State’s operating permits program (66 FR 63170). These interim and final Title V program approvals satisfy the upfront approval criteria of 40 CFR 63.91(d). Under 40 CFR 63.91(d)(2), once a State has satisfied up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent submittals of the section 112 standards. ODEQ has affirmed that it still meets the up-front approval criteria.

**V. What is being delegated?**

By letter dated January 11, 2008, ODEQ requested EPA to update its existing NESHAP delegation. With certain exceptions noted in section VI below, Oklahoma’s request included NESHAPs in 40 CFR part 61 and 40 CFR part 63. ODEQ’s request included newly incorporated NESHAPs promulgated by EPA and amendments to existing standards currently delegated, as amended between September 2, 2004 and September 1, 2006. These NESHAPs were adopted by the ODEQ on March

27, 2007, and became effective on June 15, 2007.

**VI. What is not being delegated?**

The following part 61 and 63 authorities listed below are not delegated. All of the inquiries and requests concerning implementation and enforcement of the excluded standards in the State of Oklahoma should be directed to the EPA Region 6 Office.

- 40 CFR part 61, subpart B (National Emission Standards for Radon Emissions from Underground Uranium Mines);
- 40 CFR part 61, subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities);
- 40 CFR part 61, subpart I (National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H);
- 40 CFR part 61, subpart K (National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants);
- 40 CFR part 61, subpart Q (National Emission Standards for Radon Emissions from Department of Energy facilities);
- 40 CFR part 61, subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks);
- 40 CFR part 61, subpart T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings); and
- 40 CFR part 61, subpart W (National Emission Standards for Radon Emissions from Operating Mill Tailings).

In addition, EPA cannot delegate to a State any of the Category II Subpart A authorities set forth in 40 CFR 63.91(g) (2). These include the following provisions: § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. In addition, some Part 63 standards have certain provisions that cannot be delegated to the States. Therefore, any Part 63 standard that provides that certain authorities cannot be delegated are retained by EPA and not delegated to ODEQ. Furthermore, no authorities are delegated that require rulemaking in the **Federal Register** to implement, or where Federal overview

is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. Finally, section 112(r), the accidental release program authority, is not being delegated by this approval.

In addition, this delegation to ODEQ to implement and enforce certain NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Under this definition, EPA treats as reservations, trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous federal program approvals or delegations, EPA will continue to implement the NESHAPs in Indian country because ODEQ has not submitted information to demonstrate authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.<sup>1</sup>

#### **VII. How will applicability determinations under section 112 be made?**

In approving this delegation, ODEQ will obtain concurrence from EPA on any matter involving the interpretation of section 112 of the CAA or 40 CFR parts 61 and 63 to the extent that implementation, administration, or enforcement of these sections have not been covered by EPA determinations or guidance.

#### **VIII. What authority does EPA have?**

We retain the right, as provided by CAA section 112(l)(7), to enforce any applicable emission standard or requirement under section 112. EPA also has the authority to make certain decisions under the General Provisions (subpart A) of part 63. We are granting ODEQ some of these authorities, and retaining others, as explained in sections V and VI above. In addition,

<sup>1</sup> The Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 includes a provision relating to Oklahoma and EPA programs, providing:

Notwithstanding any other provision of law, if the Administrator of the Environmental Protection Agency (referred to in this section as the "Administrator") determines that a regulatory program submitted by the State of Oklahoma for approval by the Administrator under a law administered by the Administrator meets applicable requirements of the law, and the Administrator approves the State to administer the State program under the law with respect to areas in the State that are not Indian country, on request of the State, the Administrator shall approve the State to administer the State program in the areas of the State that are in Indian country, without any further demonstration of authority by the State.

H.R. 3, Section 10211(a). Oklahoma has not applied to administer the NESHAPs program in Indian country in accordance with this statute.

EPA may review and disapprove of State determinations and subsequently require corrections. (*See* 40 CFR 63.91(g) and 65 FR 55810, 55823, September 14, 2000, as amended at 70 FR 59887, October 13, 2005; 72 FR 27443, May 16, 2007.)

Furthermore, we retain any authority in an individual emission standard that may not be delegated according to provisions of the standard. Also, listed in the footnotes of the part 63 delegation table at the end of this rule are the authorities that cannot be delegated to any State or local agency which we therefore retain.

#### **IX. What information must ODEQ provide to EPA?**

ODEQ must provide any additional compliance related information to EPA, Region 6, Office of Enforcement and Compliance Assurance within 45 days of a request under 40 CFR 63.96(a). In receiving delegation for specific General Provisions authorities, ODEQ must submit to EPA Region 6 on a semi-annual basis, copies of determinations issued under these authorities. For parts 61 and 63 standards, these determinations include: Section 63.1, Applicability Determinations; Section 63.6(e), Operation and Maintenance Requirements—Responsibility for Determining Compliance; Section 63.6(f), Compliance with Non-Opacity Standards—Responsibility for Determining Compliance; Section 63.6(h), Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance; Sections 63.7(c)(2)(i) and (d), Approval of Site-Specific Test Plans; Section 63.7(e)(2)(i), Approval of Minor Alternatives to Test Methods; Section 63.7(e)(2)(ii) and (f), Approval of Intermediate Alternatives to Test Methods; Section 63.7(e)(iii), Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors; Sections 63.7(e)(2)(iv), (h)(2), and (h)(3), Waiver of Performance Testing; Sections 63.8(c)(1) and (e)(1), Approval of Site-Specific Performance Evaluation (Monitoring) Test Plans; Section 63.8(f), Approval of Minor Alternatives to Monitoring; Section 63.8(f), Approval of Intermediate Alternatives to Monitoring; Section 63.9 and 63.10, Approval of Adjustments to Time Periods for Submitting Reports; Section 63.10(f), Approval of Minor Alternatives to Recordkeeping and Reporting; Section 63.7(a)(4), Extension of Performance Test Deadline.

#### **X. What is EPA's oversight role?**

EPA must oversee ODEQ's decisions to ensure the delegated authorities are

being adequately implemented and enforced. We will integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place. If, during oversight, we determine that ODEQ made decisions that decreased the stringency of the delegated standards, then ODEQ shall be required to take corrective actions and the source(s) affected by the decisions will be notified, as required by 40 CFR 63.91(g)(1)(ii). We will initiate withdrawal of the program or rule if the corrective actions taken are insufficient.

#### **XI. Should sources submit notices to EPA or ODEQ?**

All of the information required pursuant to the general provisions and the relevant subpart of the Federal NESHAPs (40 CFR parts 61 and 63) should be submitted by sources located outside of Indian country, directly to the ODEQ at the following address: Oklahoma Department of Environmental Quality, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677. The ODEQ is the primary point of contact with respect to delegated NESHAPs. Sources do not need to send a copy to EPA. EPA Region 6 waives the requirement that notifications and reports for delegated standards be submitted to EPA in addition to ODEQ in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii). For those standards that are not delegated, sources must continue to submit all appropriate information to EPA.

#### **XII. How will unchanged authorities be delegated to ODEQ in the future?**

In the future, ODEQ will only need to send a letter of request for approval to EPA, Region 6, for NESHAP regulations that ODEQ has adopted by reference. The letter must reference the previous up-front approval demonstration and reaffirm that it still meets the up-front approval criteria. We will respond in writing to the request stating that the request for delegation is either granted or denied. A **Federal Register** action will be published to inform the public and affected sources of the delegation, indicate where source notifications and reports should be sent, and to amend the relevant portions of the Code of Federal Regulations showing which NESHAPs standards have been delegated to ODEQ.

#### **XIII. Final Action**

The public was provided the opportunity to comment on the proposed approval of the program and mechanism for delegation of section 112 standards, as they apply to part 70

sources, on March 10, 1995, for the proposed interim approval of ODEQ's operating permits program. (60 FR 13088). In EPA's final full approval of ODEQ's operating permits program on February 5, 1996 (61 FR 4220), EPA discussed that no adverse comments were received from the public on the proposed final delegation of the operating permits program. In today's action, the public is given the opportunity to comment on the approval of ODEQ's request for delegation of authority to implement and enforce certain section 112 standards for all sources (both part 70 and non-part 70 sources) which have been adopted by reference into Oklahoma's state regulations. However, the Agency views the approval of this request as a noncontroversial action and anticipates no adverse comments. Therefore, EPA is publishing this rule without prior proposal. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the program and delegation of authority described in this action if adverse comments are received. This action will be effective April 27, 2015 without further notice unless the Agency receives relevant adverse comments by March 26, 2015.

If EPA receives relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of the rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

#### XIV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is 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). This action merely approves state law as meeting Federal requirements and imposes no additional

requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the delegation is not approved to apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state request to receive delegation of certain Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing delegation submissions, EPA's role is to approve submissions provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a delegation submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA to use VCS in place of a delegation submission that otherwise satisfies the provisions of the Clean Air Act. 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. This rule does not impose an information collection burden under the provisions of 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. 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).

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 *April 27, 2015*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects

##### 40 CFR Part 61

Environmental protection, Administrative practice and procedure, Air pollution control, Arsenic, Benzene, Beryllium, Hazardous substances, Mercury, Intergovernmental relations, Reporting and recordkeeping requirements, Vinyl chloride.

##### 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 6, 2015.

**Wren Stenger,**

*Director, Multimedia Planning and Permitting Division, Region 6.*

For the reasons stated in the preamble, 40 CFR parts 61 and 63 are amended as follows:

#### **PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

■ 1. The authority citation for part 61 continues to read as follows:

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

**Subpart A—General Provisions**

■ 2. Section 61.04 is amended by revising paragraph (c)(6)(iv) to read as follows:

**§ 61.04 Address.**  
 \* \* \* \* \*  
 (c) \* \* \*  
 (6) \* \* \*  
 (iv) *Oklahoma*. The Oklahoma Department of Environmental Quality

(ODED) has been delegated the following part 61 standards promulgated by EPA, as amended in the **Federal Register** through September 1, 2006. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR OKLAHOMA  
 [Excluding Indian country]

Subpart	Source category	ODEQ <sup>1</sup>
A	General Provisions	X
B	Radon Emissions From Underground Uranium Mines	
C	Beryllium	X
D	Beryllium Rocket Motor Firing	X
E	Mercury	X
F	Vinyl Chloride	X
G	(Reserved)	
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities	
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.	
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X
K	Radionuclide Emissions From Elemental Phosphorus Plants	
L	Benzene Emissions From Coke By-Product Recovery Plants	X
M	Asbestos	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities	X
Q	Radon Emissions From Department of Energy Facilities	
R	Radon Emissions From Phosphogypsum Stacks	
S	(Reserved)	
T	Radon Emissions From the Disposal of Uranium Mill Tailings	
U	(Reserved)	
V	Equipment Leaks (Fugitives Emission Sources)	X
W	Radon Emissions From Operating Mill Tailings	
X	(Reserved)	
Y	Benzene Emissions From Benzene Storage Vessels	X
Z-AA	(Reserved)	
BB	Benzene Emissions From Benzene Transfer Operations	X
CC-EE	(Reserved)	
FF	Benzene Waste Operations	X

<sup>1</sup> Program delegated to Oklahoma Department of Environmental Quality (ODEQ).

\* \* \* \* \*

**PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES**

■ 3. The authority citation for part 63 continues to read as follows:

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

**Subpart E—Approval of State Programs and Delegation of Federal Authorities**

■ 4. Section 63.99 is amended by revising paragraph (a)(37)(i) to read as follows:

**§ 63.99 Delegated Federal authorities.**  
 (a) \* \* \*  
 (37) \* \* \*  
 (i) The following table lists the specific part 63 standards that have been delegated unchanged to the

Oklahoma Department of Environmental Quality for all sources. The “X” symbol is used to indicate each subpart that has been delegated. The delegations are subject to all of the conditions and limitations set forth in Federal law, regulations, policy, guidance, and determinations. Some authorities cannot be delegated and are retained by EPA. These include certain General Provisions authorities and specific parts of some standards. Any amendments made to these rules after September 1, 2006 are not delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF OKLAHOMA  
 [Excluding Indian country]

Subpart	Source category	ODEQ <sup>1 2</sup>
A	General Provisions	X
F	Hazardous Organic NESHAP (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI)	X
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater	X
H	HON—Equipment Leaks	X
I	HON—Certain Processes Negotiated Equipment Leak Regulation	X
J	Polyvinyl Chloride and Copolymers Production	( <sup>3</sup> )

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF OKLAHOMA—Continued  
[Excluding Indian country]

Subpart	Source category	ODEQ <sup>1 2</sup>
K	(Reserved)	
L	Coke Oven Batteries	X
M	Perchloroethylene Dry Cleaning	X
N	Chromium Electroplating and Chromium Anodizing Tanks	X
O	Ethylene Oxide Sterilizers	X
P	(Reserved)	
Q	Industrial Process Cooling Towers	X
R	Gasoline Distribution	X
S	Pulp and Paper Industry	X
T	Halogenated Solvent Cleaning	X
U	Group I Polymers and Resins	X
V	(Reserved)	
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X
X	Secondary Lead Smelting	X
Y	Marine Tank Vessel Loading	X
Z	(Reserved)	
AA	Phosphoric Acid Manufacturing Plants	X
BB	Phosphate Fertilizers Production Plants	X
CC	Petroleum Refineries	X
DD	Off-Site Waste and Recovery Operations	X
EE	Magnetic Tape Manufacturing	X
FF	(Reserved)	
GG	Aerospace Manufacturing and Rework Facilities	X
HH	Oil and Natural Gas Production Facilities	X
II	Shipbuilding and Ship Repair Facilities	X
JJ	Wood Furniture Manufacturing Operations	X
KK	Printing and Publishing Industry	X
LL	Primary Aluminum Reduction Plants	X
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills	X
NN	(Reserved)	
OO	Tanks—Level 1	X
PP	Containers	X
QQ	Surface Impoundments	X
RR	Individual Drain Systems	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process	X
TT	Equipment Leaks—Control Level 1	X
UU	Equipment Leaks—Control Level 2 Standards	X
VV	Oil—Water Separators and Organic—Water Separators	X
WW	Storage Vessels (Tanks)—Control Level 2	X
XX	Ethylene Manufacturing Process Units Heat Exchange Systems and Waste Operations	X
YY	Generic Maximum Achievable Control Technology Standards	X
ZZ-BBB	(Reserved)	
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration	X
DDD	Mineral Wool Production	X
EEE	Hazardous Waste Combustors	X
FFF	(Reserved)	
GGG	Pharmaceuticals Production	X
HHH	Natural Gas Transmission and Storage Facilities	X
III	Flexible Polyurethane Foam Production	X
JJJ	Group IV Polymers and Resins	X
KKK	(Reserved)	
LLL	Portland Cement Manufacturing	X
MMM	Pesticide Active Ingredient Production	X
NNN	Wool Fiberglass Manufacturing	X
OOO	Amino/Phenolic Resins	X
PPP	Polyether Polyols Production	X
QQQ	Primary Copper Smelting	X
RRR	Secondary Aluminum Production	X
SSS	(Reserved)	
TTT	Primary Lead Smelting	X
UUU	Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants	X
VVV	Publicly Owned Treatment Works (POTW)	X
WWW	(Reserved)	
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese	X
AAAA	Municipal Solid Waste Landfills	X
CCCC	Nutritional Yeast Manufacturing	X
DDDD	Plywood and Composite Wood Products	X
EEEE	Organic Liquids Distribution	X
FFFF	Misc. Organic Chemical Production and Processes (MON)	X
GGGG	Solvent Extraction for Vegetable Oil Production	X
HHHH	Wet Formed Fiberglass Mat Production	X

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF OKLAHOMA—Continued  
 [Excluding Indian country]

Subpart	Source category	ODEQ <sup>1 2</sup>
IIII	Auto & Light Duty Truck (Surface Coating)	X
JJJJ	Paper and other Web (Surface Coating)	X
KKKK	Metal Can (Surface Coating)	X
MMMM	Misc. Metal Parts and Products (Surface Coating)	X
NNNN	Surface Coating of Large Appliances	X
OOOO	Fabric Printing Coating and Dyeing	X
PPPP	Plastic Parts (Surface Coating)	X
QQQQ	Surface Coating of Wood Building Products	X
RRRR	Surface Coating of Metal Furniture	X
SSSS	Surface Coating for Metal Coil	X
TTTT	Leather Finishing Operations	X
UUUU	Cellulose Production Manufacture	X
VVVV	Boat Manufacturing	X
WWWW	Reinforced Plastic Composites Production	X
XXXX	Tire Manufacturing	X
YYYY	Combustion Turbines	X
ZZZZ	Reciprocating Internal Combustion Engines (RICE)	X
AAAA	Lime Manufacturing Plants	X
BBBB	Semiconductor Manufacturing	X
CCCC	Coke Ovens: Pushing, Quenching and Battery Stacks	X
DDDD	Industrial/Commercial/Institutional Boilers and Process Heaters Major Sources	X
EEEE	Iron Foundries	X
FFFF	Integrated Iron and Steel	X
GGGG	Site Remediation	X
HHHH	Miscellaneous Coating Manufacturing	X
IIII	Mercury Cell Chlor-Alkali Plants	X
JJJJ	Brick and Structural Clay Products Manufacturing	X
KKKK	Clay Ceramics Manufacturing	X
LLLL	Asphalt Roofing and Processing	X
MMMM	Flexible Polyurethane Foam Fabrication Operation	X
NNNN	Hydrochloric Acid Production, Fumed Silica Production	X
OOOO	(Reserved)	.....
PPPP	Engine Test Facilities	X
QQQQ	Friction Products Manufacturing	X
RRRR	Taconite Iron Ore Processing	X
SSSS	Refractory Products Manufacture	X
TTTT	Primary Magnesium Refining	X

<sup>1</sup> Program delegated to Oklahoma Department of Environmental Quality (ODEQ).

<sup>2</sup> Authorities which may not be delegated include: § 63.6(g), Approval of Alternative Non-Opacity Emission Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting; and all authorities identified in the subparts (e.g., under "Delegation of Authority") that cannot be delegated.

<sup>3</sup> The ODEQ has adopted this subpart unchanged and applied for delegation of the standard. The subpart was vacated and remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit. See, *Mossville Environmental Action Network v. EPA*, 370 F. 3d 1232 (D.C. Cir. 2004). Because of the D.C. Court's holding, this subpart is not delegated to ODEQ at this time.

\* \* \* \* \*

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 411, 412, 416, 419, 422, 423, and 424**

[CMS-1613-CN]

RIN 0938-AS15

**Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Physician-Owned Hospitals: Data Sources for Expansion Exception; Physician Certification of Inpatient Hospital Services; Medicare Advantage Organizations and Part D Sponsors: CMS-Identified Overpayments Associated With Submitted Payment Data; Corrections**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction of final rule.

**SUMMARY:** This document corrects technical errors that appeared in the final rule with comment period published in the *Federal Register* on November 10, 2014, entitled “Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Physician-Owned Hospitals: Data Sources for Expansion Exception; Physician Certification of Inpatient Hospital Services; Medicare Advantage Organizations and Part D Sponsors: CMS-Identified Overpayments Associated with Submitted Payment Data.”

**DATES:** *Effective Date:* This document is effective February 24, 2015.

*Applicability Date:* The corrections noted in this document and posted on the CMS Web site are applicable to payments for services furnished on or after January 1, 2015.

**FOR FURTHER INFORMATION CONTACT:** David Rice, (410) 786-6004, hospital outpatient prospective payment system (OPPS) issues.

Esther Markowitz, (410) 786-4595, ambulatory surgical center (ASC) payment issues.

Marjorie Baldo, (410) 786-4617, OPPS issues related to status indicators (SI) and ambulatory payment classification (APC) changes.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In FR Doc. 2014-26146 of November 10, 2014 (79 FR 66770) (hereinafter

referred to as the CY 2015 OPPS/ASC final rule with comment period), there were a number of technical errors that are discussed in the Summary of Errors, and further identified and corrected in the Correction of Errors section below. The provisions in this correction notice are applicable to payments for services furnished on or after January 1, 2015, and, therefore, are treated as if they had been included in the CY 2015 OPPS/ASC final rule with comment period (79 FR 66770) appearing in the November 10, 2014 *Federal Register*.

**II. Summary of Errors and Corrections Posted on the CMS Web site**

*A. Hospital Outpatient Prospective Payment System (OPPS) Corrections*

In the CY 2015 OPPS/ASC final rule with comment period, for the OPPS cancer hospital payment adjustment (79 FR 66831 through 66832), we finalized a target payment-to-cost ratio (PCR) of 0.89. This target PCR is equal to the weighted average PCR for the other OPPS hospitals included in this dataset (see 79 FR 66832 for more details on the hospitals included in this dataset). Under our longstanding policy, outlier payments are included in the calculation of the weighted average PCR (or “target PCR”) for these hospitals. We have since determined that some outlier payments were not included in the cost report data we used to calculate the target PCR. We have corrected this error and included these outlier payments in the target PCR calculation, which results in a target PCR equal to 0.90 for each cancer hospital.

In addition to identifying the error in calculating the target PCR because of missing outlier payments, we determined that certain outlier payments were similarly not included in our calculations for estimated cancer hospital PCRs. We have now corrected this error and included these outlier payments in determining the estimated cancer hospital PCRs. As a result of correcting these two technical errors, the estimated total cancer hospital payment adjustments, which are based on the difference between estimated cancer hospital PCRs and the target PCR is also being corrected in this notice. The revisions to the target PCR and estimated cancer hospital PCRs have decreased our estimate of total cancer hospital payment adjustments by \$18.6 million.

OPPS cancer hospital payment adjustment payments are budget neutral; therefore, we are updating the budget neutrality adjustment to the OPPS conversion factor for the differential in estimated total cancer

hospital payment adjustments of \$18.6 million. This additional \$18.6 million increases the conversion factor from \$74.144 to \$74.173, which will slightly increase payment rates for most ambulatory payment classifications (APCs). These revised APC payment rates are reflected in the attached Addenda.

We are also making technical corrections to certain healthcare common procedure coding system (HCPCS) codes that appeared in Table 36—HCPCS Codes to Which the CY 2015 Drug-Specific Packaging Determination Methodology Applies (79 FR 66889). Specifically, we are correcting the CY 2015 OPPS status indicators (SI) for HCPCS codes J1070, J1080, J2271, J3120, and J3130 from “N” to “D” to accurately indicate that these codes were deleted on December 31, 2014, and should not have appeared in Table 36. These codes were correctly assigned to OPPS SI “D” in the OPPS Addendum B that was released with the CY 2015 OPPS/ASC final rule. In addition, HCPCS codes J1440 and J1441 were deleted on December 31, 2013, and should not have appeared in Table 36. HCPCS codes J1440 and J1441 were not listed in the OPPS Addendum B that was released with the CY 2015 OPPS/ASC final rule.

Also, in Addendum B of the CY 2015 OPPS/ASC final rule with comment period, HCPCS code J7180 (Factor xiii anti-hem factor) was incorrectly assigned a status indicator “N”. Because HCPCS code J7180 is a separately payable drug, we have corrected this error and assigned status indicator “K” and APC 1416. This correction is included in the revised OPPS Addendum B which is posted to the CMS Web site at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/Hospital-Outpatient-Regulations-and-Notices.html>.

*B. Ambulatory Surgical Center (ASC) Payment System Corrections*

ASC payment rates are based on the OPPS relative payment weights for the majority of covered surgical procedures and covered ancillary services. For some items, such as device-intensive procedures, the ASC payment rates also take into account the OPPS conversion factor and payment rates. Therefore, corrections to the CY 2015 OPPS conversion factor and payment rates affect the CY 2015 ASC payment rates.

To account for geographic wage variation, individual ASC payments are adjusted by applying the pre-floor and pre-reclassified inpatient prospective payment system (IPPS) hospital wage

indexes to the labor-related share, which is 50 percent of the ASC payment amount. In other words, the wage index for an ASC is the pre-floor and pre-reclassified IPPS hospital wage index of the CBSA that maps to the CBSA where the ASC is located. The FY 2015 IPPS hospital wage indexes reflect new Office of Management and Budget (OMB) labor market area delineations; therefore, the CY 2015 final ASC wage indexes reflect the new OMB delineations. However, as described in the CY 2015 OPPS/ASC final rule (79 FR 66935 through 66937), we finalized a policy to apply a one-year blended wage index for all ASCs that will experience any decrease in their actual wage index exclusively due to the implementation of the new OMB delineations. Specifically, for ASCs where the CY 2015 ASC wage index with the CY 2015 Core-Based Statistical Areas (CBSAs) is lower than with the CY 2014 CBSAs, the CY 2015 ASC wage index is 50 percent of the ASC wage index based on the CY 2014 CBSA and 50 percent of the ASC wage index based on the new CY 2015 CBSA. We have since determined that the transitional wage index for CY 2015 was calculated incorrectly. We have now recalculated the CY 2015 ASC wage index per the policy finalized in the CY 2015 OPPS/ASC final rule with comment period.

Due to these corrections, the final CY 2015 ASC wage index budget neutrality adjustment changes from 0.9998, as originally published (79 FR 66939 and 67023), to 0.9995. Using the final corrected wage index budget neutrality adjustment, the final CY 2015 ASC conversion factor changes from \$44.071, as originally published (79 FR 66939,

66940, and 67023), to \$44.058. The final CY 2015 ASC conversion factor for ASCs that do not meet the requirements of the ASC Quality Reporting Program changes from \$43.202, as originally published (79 FR 66939), to \$43.189.

The final CY 2015 ASC rates and indicators for certain office-based covered surgical procedures and certain covered ancillary services were impacted due to corrections to the final CY 2015 Medicare Physician Fee Schedule (MPFS) rates. We note that we expect to issue the CY 2015 MPFS corrections in a separate **Federal Register** document in the near future. For covered office-based surgical procedures, covered ancillary radiology services (except certain nuclear medicine procedures and radiology procedures that use contrast agents), and certain covered ancillary diagnostic tests, the payment rate is the lower of the amount calculated using the ASC standard ratesetting methodology and the MPFS nonfacility practice expense relative value unit-based amount effective January 1, 2015. The corrections discussed in the MPFS correcting document affected some of the final payment indicators and rates for these covered surgical procedures and covered ancillary services. As such, we have corrected these payment indicators and rates based upon the MPFS corrections discussed in the MPFS correcting document. As stated in the preamble and addenda to the CY 2015 OPPS/ASC final rule with comment period (79 FR 66922, 66923, 66931, 66934, and 66939), the ASC payment indicators and rates do not include the effect of the negative update

to the MPFS payment rates effective April 1, 2015 under current law. Updates to the ASC rates and payment indicators effective April 1, 2015 will be included in the April 2015 quarterly ASC addenda posted on the CMS Web site.

*C. Summary of Errors and Corrections to the OPPS and ASC Addenda Posted on the CMS Web site*

1. OPPS Addenda Posted on the CMS Web site

We are making several minor technical corrections to the OPPS addenda. First, as a result of the cancer hospital payment adjustment correction and subsequent budget neutrality adjustment corrections, we have updated Addenda A, B, and C to reflect corrected APC payment rates.

Secondly, CPT codes 88342, 88344, and 88366, were incorrectly assigned to OPPS SI “E” and “N”. Because these services may be separately payable in certain instances, we have corrected this error. Specifically, we are correcting the OPPS SI and APC assignments for CPT code 88342 to “Q1” and APC 0433; for CPT code 88344 to “Q1” and APC 0433; and for CPT code 88366 to “Q1” and APC 0342. We have updated OPPS Addendum B to reflect these corrected SIs.

Further, the 24 codes listed below were assigned to incorrect OPPS SIs. The correct OPPS SIs are listed in the table below. Because these changes were too late to include in the January 2015 Integrated Outpatient Code Editor (IOCE), they will be included in the April 2015 IOCE update retroactive to January 1, 2015.

HCPCS code	Short descriptor	CY 2015 OPPS SI	CY 2015 OPPS APC
0356T	Insrt drug device for iop	Q1	0698
86592	Syphilis test non-trep qual	A	
86593	Syphilis test non-trep quant	A	
86631	Chlamydia antibody	A	
86632	Chlamydia igm antibody	A	
86780	Treponema pallidum	A	
87110	Chlamydia culture	A	
87270	Chlamydia trachomatis ag if	A	
87320	Chylmd trach ag eia	A	
87341	Hepatitis b surface ag eia	A	
87490	Chylmd trach dna dir probe	A	
87491	Chylmd trach dna amp probe	A	
87590	N.gonorrhoeae dna dir prob	A	
87591	N.gonorrhoeae dna amp prob	A	
87800	Detect agnt mult dna direc	A	
87810	Chylmd trach assay w/optic	A	
87850	N. gonorrhoeae assay w/optic	A	
88380	Microdissection laser	N	
88381	Microdissection manual	N	
88387	Tiss exam molecular study	N	
93895	Carotid intima atheroma eval	E	
G0461	Immunohisto/cyto chem 1st st	D	
G0462	Immunohisto/cyto chem add	D	
V2760	Scratch resistant coating	E	



HCPCS code	Short descriptor	CY 2015 OPPS SI	CY 2015 OPPS APC
V2762 .....	Polarization, any lens .....	E	.....
V2786 .....	Occupational multifocal lens .....	E	.....
V2797 .....	Vis item/svc in other code .....	E	.....

We are correcting the OPPS SI for CPT code 0356T to “Q1” since this is the SI assigned to APC 0698. In addition, we are correcting the OPPS SI for CPT codes 86592 through 87850 to “A” to indicate that these preventive services are paid separately in another Medicare payment system other than the OPPS. Further, we are correcting the OPPS SI for CPT codes 88380, 88381, and 88387 to “N” to indicate that these services are packaged. We are also correcting the OPPS SI for CPT code 93895 to “E” to indicate that this service is non-covered. We are correcting the OPPS SI for HCPCS codes G0461 and G0462 to “D” to indicate that these codes were deleted on December 31, 2014. Also, we are correcting the OPPS SI for HCPCS codes V2760, V2762, V2786, and V2797 to “E” to indicate that these items are non-covered under the OPPS.

To view the corrected CY 2015 OPPS payment rates that result from these technical corrections, we refer readers to the Addenda and supporting files that are posted on the CMS Web site at: <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html>. Select “CMS–1613–CN” from the list of regulations. All corrected Addenda for this correcting document are contained in the zipped folder titled “2015 OPPS Final Rule Addenda” at the bottom of the page for CMS–1613–CN.

**2. Ambulatory Surgical Center (ASC) Payment System Addenda Posted on the CMS Web site**

As a result of the technical corrections described in Section II.B. and IV. of this correction notice, we have updated Addenda AA and BB to reflect the final corrected payment rates and indicators for CY 2015 for ASC covered surgical procedures and covered ancillary services. To view the corrected final CY 2015 ASC payment rates and indicators that result from these technical corrections, we refer readers to the Addenda and supporting files that are posted on the CMS Web site at: <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ASCPayment/ASC-Regulations-and-Notices.html>. Select “CMS–1613–CN” from the list of regulations. All corrected ASC addenda for this correcting document are contained in the zipped folder entitled “Addendum AA, BB, DD1, DD2, and

EE” at the bottom of the page for CMS–1613–CN. The corrected final CY 2015 ASC wage index file and updated public use files are also posted on this Web page.

**III. Waiver of Proposed Rulemaking, 60-Day Comment Period, and Delay of Effective Date**

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements. This correcting document corrects technical errors in the preamble, addenda, payment rates, and tables included or referenced in the CY 2015 OPPS/ASC final rule with comment period. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were adopted subjected to notice

and comment procedures in the CY 2015 OPPS/ASC final rule with comment period. As a result, the corrections made through this correcting document are intended to ensure that the CY 2015 OPPS/ASC final rule with comment period accurately reflects the policies adopted in that rule.

Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements.

Undertaking further notice and comment procedures to incorporate the corrections in this document into the CY 2015 OPPS/ASC final rule with comment period or delaying the effective date would be contrary to the public interest because it is in the public’s interest for providers and suppliers to receive appropriate payments in as timely a manner as possible, and to ensure that the CY 2015 OPPS/ASC final rule with comment period accurately reflects our policies as of the date they take effect and are applicable. Further, such procedures would be unnecessary, because we are not altering the payment methodologies or policies, but rather, we are simply correctly implementing the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the CY 2015 OPPS/ASC final rule with comment period accurately reflects these payment methodologies and policies. For these reasons, we believe we have good cause to waive the notice and comment and effective date requirements.

**IV. Correction of Errors**

In FR Doc. 2014–26146 of November 10, 2014 (79 FR 66770), make the following corrections:

*Correction of Errors in the Preamble*

1. On page 66776, second column, second bullet, lines 11 and 17, the figure “0.89” is corrected to read “0.90”.

2. On page 66777, third column, first paragraph under column heading (4), line 11, the figure “2.3” is corrected to read “2.4”.

3. On page 66825,  
a. Second column,  
(1) First partial paragraph, lines 6 through 14, remove the last two

sentences of the paragraph and add the following sentence in its place: “The CY 2015 estimated cancer hospital payment adjustments result in a budget neutral adjustment factor of 1.0004 to the conversion factor for the cancer hospital payment adjustment.”

(2) Second full paragraph,

(a) Line 17, the figure “\$72.692” is corrected to read “\$72.690”.

(b) Line 19, the figure “– \$1.484” is corrected to read “– \$1.483”.

b. Third column,

(1) First full paragraph, line 13, the figure “\$72.661” is corrected to read “\$72.690”.

(2) Last paragraph, line 10, the figure “\$74.144” is corrected to read “\$74.173”.

4. On page 66826, first column, first partial paragraph,

(a) Line 2, the figure “1.0000” is corrected to read “1.0004”.

(b) Line 7, the figure “\$74.144” is corrected to read “\$74.173”.

5. On page 66832,

a. First column, first partial paragraph,

(1) Line 3, the figure “89” is corrected to read “90”.

(2) Lines 5 and 11, the figure “0.89” is corrected to read “0.90”.

b. Second column,

(1) First partial paragraph, line 4, the figure “0.89” is corrected to read “0.90”.

(2) First full paragraph, lines 4 and 9, the figure “0.89 is corrected to read “0.90”.

c. Third column, first partial paragraph,

(1) Line 3, the figure “89” is corrected to read “90”.

(2) Lines 5 and 11, the figure “0.89” is corrected to read “0.90”.

d. Table 14—Estimated CY 2015 Hospital-Specific Payment Adjustment For Cancer Hospitals To Be Provided At Cost Report Settlement, the table is corrected to read as follows:

TABLE 14—ESTIMATED CY 2015 HOSPITAL-SPECIFIC PAYMENT ADJUSTMENT FOR CANCER HOSPITALS TO BE PROVIDED AT COST REPORT SETTLEMENT

Provider No.	Hospital name	Estimated percentage increase in OPPS Payments for CY 2015
050146 .....	City of Hope Comprehensive Cancer Center .....	16.1
050660 .....	USC Norris Cancer Hospital .....	23.2
100079 .....	Sylvester Comprehensive Cancer Center .....	12.7
100271 .....	H. Lee Moffitt Cancer Center & Research Institute .....	20.5
220162 .....	Dana-Farber Cancer Institute .....	47.3
330154 .....	Memorial Sloan-Kettering Cancer Center .....	42.4
330354 .....	Roswell Park Cancer Institute .....	19.2
360242 .....	James Cancer Hospital & Solove Research Institute .....	32.7
390196 .....	Fox Chase Cancer Center .....	19.7
450076 .....	M.D. Anderson Cancer Center .....	49.4
500138 .....	Seattle Cancer Care Alliance .....	43.6

6. On page 66889, Table 36—HCPCS Codes To Which The CY 2015 Drug-Specific Packaging Determination

Methodology Applies, the table is corrected to read as follows:

TABLE 36—HCPCS CODES TO WHICH THE CY 2015 DRUG-SPECIFIC PACKAGING DETERMINATION METHODOLOGY APPLIES

CY 2015 HCPCS code	CY 2015 long descriptor	CY 2015 SI
C9257 .....	Injection, bevacizumab, 0.25 mg .....	K
J9035 .....	Injection, bevacizumab, 10 mg .....	K
J1020 .....	Injection, methylprednisolone acetate, 20 mg .....	N
J1030 .....	Injection, methylprednisolone acetate, 40 mg .....	N
J1040 .....	Injection, methylprednisolone acetate, 80 mg .....	N
J1460 .....	Injection, gamma globulin, intramuscular, 1 cc .....	N
J1560 .....	Injection, gamma globulin, intramuscular over 10 cc .....	N
J1642 .....	Injection, heparin sodium, (heparin lock flush), per 10 units .....	N
J1644 .....	Injection, heparin sodium, per 1000 units .....	N
J1840 .....	Injection, kanamycin sulfate, up to 500 mg .....	N
J1850 .....	Injection, kanamycin sulfate, up to 75 mg .....	N
J2270 .....	Injection, morphine sulfate, up to 10 mg .....	N
J2788 .....	Injection, rho d immune globulin, human, minidose, 50 micrograms (250 i.u.) .....	N
J2790 .....	Injection, rho d immune globulin, human, full dose, 300 micrograms (1500 i.u.) .....	N
J2920 .....	Injection, methylprednisolone sodium succinate, up to 40 mg .....	N
J2930 .....	Injection, methylprednisolone sodium succinate, up to 125 mg .....	N
J3471 .....	Injection, hyaluronidase, ovine, preservative free, per 1 usp unit (up to 999 usp units) .....	N
J3472 .....	Injection, hyaluronidase, ovine, preservative free, per 1000 usp units .....	N
J7030 .....	Infusion, normal saline solution , 1000 cc .....	N
J7040 .....	Infusion, normal saline solution, sterile (500 ml = 1 unit) .....	N
J7050 .....	Infusion, normal saline solution , 250 cc .....	N
J7502 .....	Cyclosporine, oral, 100 mg .....	N
J7515 .....	Cyclosporine, oral, 25 mg .....	N
J8520 .....	Capecitabine, oral, 150 mg .....	K

TABLE 36—HCPCS CODES TO WHICH THE CY 2015 DRUG-SPECIFIC PACKAGING DETERMINATION METHODOLOGY APPLIES—Continued

CY 2015 HCPCS code	CY 2015 long descriptor	CY 2015 SI
J8521 .....	Capecitabine, oral, 500 mg .....	K
J9250 .....	Methotrexate sodium, 5 mg .....	N
J9260 .....	Methotrexate sodium, 50 mg .....	N

7. On page 66917, third column, remove the first full paragraph and add the following paragraph in its place: “For the new Category III CPT codes implemented in July 2014 through the quarterly update CR, as shown below in Table 43, we are not finalizing the “Z2” payment indicator that we proposed for CPT codes 0348T, 0349T, and 0350T or the “R2” payment indicator that we proposed for CPT code 0356T. For CY

2015, these codes will be conditionally packaged under the OPPS when provided with a significant procedure (status indicator “Q1”). With the exception of device removal procedures (as discussed in section XII.D.1.b. of this final rule with comment period), HCPCS codes that are conditionally packaged under the OPPS are always packaged (payment indicator “N1”) under the ASC payment system. Therefore, the

final CY 2015 ASC payment indicator for CPT codes 0348T, 0349T, 0350T, and 0356T is “N1” for CY 2015.

8. On page 66918, Table 43—New Category III CPT Codes for Covered Surgical Procedures or Covered Ancillary Services Implemented in July 2014, the table is corrected to read as follows:

TABLE 43—NEW CATEGORY III CPT CODES FOR COVERED SURGICAL PROCEDURES OR COVERED ANCILLARY SERVICES IMPLEMENTED IN JULY 2014

CY 2014 CPT code	CY 2015 CPT code	CY 2015 long descriptor	Final CY 2015 ASC payment indicator
0348T	0348T	Radiologic examination, radiostereometric analysis (RSA); spine, (includes, cervical, thoracic and lumbosacral, when performed) .....	N1
0349T	0349T	Radiologic examination, radiostereometric analysis (RSA); upper extremity(ies), (includes shoulder, elbow and wrist, when performed) .....	N1
0350T	0350T	Radiologic examination, radiostereometric analysis (RSA); lower extremity(ies), (includes hip, proximal femur, knee and ankle, when performed) .....	N1
0356T	0356T	Insertion of drug-eluting implant (including punctal dilation and implant removal when performed) into lacrimal canaliculus, each .....	N1

N1 = Packaged service/item; no separate payment made.

9. On page 66939, a. Second column, last paragraph, line 10, the figure “0.9998” is corrected to read “0.9995”.

b. Third column, first partial paragraph, (1) Line 6, the figure “\$44.071” is corrected to read “\$44.058”.

(2) Line 11, the figure “0.9998” is corrected to read “0.9995”.

(3) Line 21, the figure “\$43.202” is corrected to read “\$43.189”.

(4) Line 26, the figure “0.9998” is corrected to read “0.9995”.

10. On page 66940, first column, second full paragraph, line 6, the figure “\$44.071” is corrected to read “\$44.058”.

11. On page 66962, second column, first full paragraph,

a. Line 12, the figure “\$72.661” is corrected to read “\$72.690”.

b. Line 14, the figure “\$74.144” is corrected to read “\$74.173”.

12. On page 67019,

a. Second column, first paragraph, (1) Line 3, the figure “(4,006)” is corrected to read “(4,007)”.

(2) Line 31, the figure “(3,871)” is corrected to read “(3,782)”.

b. Third column, remove the entire fourth paragraph, which begins with “There is no difference in impact” and add the following paragraph in its place: “The impacts reflect slightly smaller total cancer hospital payment adjustments as a result of the updated target PCR and updated estimated cancer hospital PCRs for 2015.”

13. On page 67020,

a. First column, first full paragraph under column 5 heading,

(1) Line 10, the figures “3.4 and 4.2” are corrected to read “3.5 and 4.3” respectively.

(2) Line 14, the figure “3.2” is corrected to read “3.3”.

b. Second column, first partial paragraph, line 9, the figure “\$74.144” is corrected to read “\$74.173”.

c. Third column,

(1) First partial paragraph, last line, the figure “2.3” is corrected to read “2.4”.

(2) First full paragraph, line 11, the figures “0.9 to 2.1” are corrected to read “1.0 to 2.2” respectively.

(3) Second full paragraph, line 4, the figure “3.1” is corrected to read “3.2”.

(4) Last paragraph,

(a) Line 7, the figure “1.7” is corrected to read “1.8”.

(b) Line 9, the figure “2.1” is corrected to read “2.2”.

14. On pages 67020 through 67022, Table 49—Estimated Impact of the CY 2015 Changes for the Hospital Outpatient Prospective Payment System, the table is corrected to read as follows:

TABLE 49—ESTIMATED IMPACT OF THE PROPOSED CY 2015 CHANGES FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

	Number of hospitals	APC recalibration (all changes)	New wage index and provider adjustments	All budget neutral changes (combined cols 2, 3) with market basket update	All budget neutral changes and update (column 4) with frontier wage index adjustment	All changes
	(1)	(2)	(3)	(4)	(5)	(6)
ALL FACILITIES * .....	4,007	0.0	0.0	2.2	2.3	2.3
ALL HOSPITALS .....	3,872	0.0	0.0	2.3	2.4	2.3
(excludes hospitals permanently held harmless and CMHCs).						
URBAN HOSPITALS .....	3,008	0.0	0.0	2.3	2.4	2.4
LARGE URBAN (GT 1 MILL.) .....	1,646	0.1	0.2	2.5	2.5	2.6
OTHER URBAN (LE 1 MILL.) .....	1,362	0.0	-0.1	2.1	2.3	2.1
RURAL HOSPITALS .....	863	0.0	-0.3	1.9	2.2	1.9
SOLE COMMUNITY .....	376	0.1	-0.2	2.2	2.6	2.2
OTHER RURAL .....	487	-0.2	-0.3	1.7	1.7	1.6
BEDS (URBAN):						
0-99 BEDS .....	1,067	0.0	0.0	2.3	2.5	2.3
100-199 BEDS .....	856	0.0	0.0	2.2	2.3	2.3
200-299 BEDS .....	458	-0.1	0.1	2.3	2.4	2.3
300-499 BEDS .....	410	-0.1	0.1	2.3	2.4	2.3
500 + BEDS .....	217	0.3	-0.1	2.5	2.4	2.5
BEDS (RURAL):						
0-49 BEDS .....	345	0.1	-0.2	2.2	2.4	2.2
50-100 BEDS .....	315	0.3	-0.3	2.3	2.5	2.2
101-149 BEDS .....	116	-0.3	-0.1	1.9	2.1	1.8
150-199 BEDS .....	46	-0.4	-0.4	1.4	2.2	1.5
200 + BEDS .....	41	-0.3	-0.4	1.6	1.5	1.5
VOLUME (URBAN):						
LT 5,000 Lines .....	544	-1.7	-0.3	0.3	0.5	0.5
5,000-10,999 Lines .....	135	-0.8	-0.2	1.3	1.4	1.4
11,000-20,999 Lines .....	117	-1.5	0.0	0.7	1.2	0.9
21,000-42,999 Lines .....	228	-0.7	0.0	1.6	1.5	1.6
42,999-89,999 Lines .....	526	-0.3	0.0	1.9	2.0	2.0
GT 89,999 Lines .....	1,458	0.1	0.0	2.4	2.5	2.4
VOLUME (RURAL):						
LT 5,000 Lines .....	34	-3.8	-0.3	-1.8	1.1	-2.0
5,000-10,999 Lines .....	27	-1.8	-0.5	-0.1	1.1	0.0
11,000-20,999 Lines .....	42	-1.1	-0.3	0.9	0.9	1.0
21,000-42,999 Lines .....	161	0.2	-0.3	2.2	2.8	2.2
GT 42,999 Lines .....	599	0.0	-0.3	2.0	2.2	1.9
REGION (URBAN):						
NEW ENGLAND .....	152	1.1	0.2	3.5	3.5	3.5
MIDDLE ATLANTIC .....	361	0.5	0.5	3.2	3.2	3.3
SOUTH ATLANTIC .....	482	-0.2	-0.3	1.8	1.7	1.8
EAST NORTH CENT. ....	473	0.1	-0.1	2.2	2.2	2.2
EAST SOUTH CENT. ....	179	-0.9	-0.5	0.9	0.9	0.9
WEST NORTH CENT. ....	194	0.0	-0.2	2.0	3.3	2.1
WEST SOUTH CENT. ....	527	-0.7	-0.5	1.1	1.0	1.1
MOUNTAIN .....	203	0.0	-0.1	2.2	2.5	2.2
PACIFIC .....	389	0.3	1.1	3.7	3.6	3.7
PUERTO RICO .....	48	-0.4	0.3	2.1	2.1	2.0
REGION (RURAL):						
NEW ENGLAND .....	23	1.6	-0.1	3.7	3.6	3.7
MIDDLE ATLANTIC .....	58	0.8	0.2	3.3	3.3	3.2
SOUTH ATLANTIC .....	130	-0.6	-0.5	1.1	1.1	1.0
EAST NORTH CENT. ....	120	0.0	0.0	2.2	2.2	2.2
EAST SOUTH CENT. ....	165	-0.8	-0.5	1.0	1.0	0.9
WEST NORTH CENT. ....	101	0.2	-0.2	2.2	3.5	2.2
WEST SOUTH CENT. ....	181	-0.7	-0.8	0.8	0.7	0.7
MOUNTAIN .....	61	0.7	-0.4	2.5	4.3	2.7
PACIFIC .....	24	0.8	0.9	4.0	4.0	3.9
TEACHING STATUS:						
NON-TEACHING .....	2,839	-0.2	0.0	2.0	2.1	2.0
MINOR .....	706	-0.2	-0.1	2.0	2.2	2.0
MAJOR .....	326	0.7	0.1	3.1	3.1	3.2
DSH PATIENT PERCENT:						
0 .....	21	0.0	0.3	2.6	2.6	2.6
GT 0-0.10 .....	328	0.3	0.2	2.7	2.8	2.7

TABLE 49—ESTIMATED IMPACT OF THE PROPOSED CY 2015 CHANGES FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

	Number of hospitals	APC recalibration (all changes)	New wage index and provider adjustments	All budget neutral changes (combined cols 2, 3) with market basket update	All budget neutral changes and update (column 4) with frontier wage index adjustment	All changes
	(1)	(2)	(3)	(4)	(5)	(6)
0.10–0.16 .....	334	0.1	0.0	2.4	2.5	2.4
0.16–0.23 .....	680	0.1	0.0	2.3	2.4	2.3
0.23–0.35 .....	1,076	0.0	0.0	2.2	2.4	2.2
GE 0.35 .....	824	0.1	0.1	2.3	2.3	2.5
DSH NOT AVAILABLE** .....	608	-3.6	0.0	-1.4	-1.3	-1.4
URBAN TEACHING/DSH:						
TEACHING & DSH .....	938	0.2	0.0	2.5	2.6	2.5
NO TEACHING/DSH .....	1,477	-0.2	0.1	2.1	2.2	2.1
NO TEACHING/NO DSH .....	18	-0.1	0.4	2.5	2.5	2.5
DSH NOT AVAILABLE** .....	575	-3.3	0.1	-0.9	-0.9	-1.0
TYPE OF OWNERSHIP:						
VOLUNTARY .....	2,006	0.1	0.0	2.4	2.5	2.4
PROPRIETARY .....	1,322	-0.4	-0.1	1.7	1.9	1.8
GOVERNMENT .....	543	-0.1	-0.1	2.1	2.1	2.2
CMHCs .....	72	0.0	-0.5	1.8	1.8	1.3

Column (1) shows the total number of hospitals and/or CMHCs.

Column (2) shows the impact of all final CY 2015 OPPS APC policies and compares those to the CY 2014 OPPS.

Column (3) shows the budget neutral impact of updating the wage index by applying the final FY 2015 hospital inpatient wage index, including all hold harmless policies and transitional wages. The final rural adjustment continues our current policy of 7.1 percent so the budget neutrality factor is 1. The budget neutrality adjustment for the cancer hospital adjustment is 1.004.

Column (4) shows the impact of all budget neutrality adjustments and the addition of the proposed 2.2 percent OPD fee schedule update factor (2.9 percent reduced by 0.5 percentage points for the final productivity adjustment and further reduced by 0.2 percentage point in order to satisfy statutory requirements set forth in the Affordable Care Act).

Column (5) shows the impact of all budget neutral changes and the non-budget neutral impact of applying the frontier State wage adjustment in CY 2015.

Column (6) shows the additional adjustments to the conversion factor resulting from a change in the pass-through estimate, adding estimated outlier payments, and applying payment wage indexes.

\* These 4,007 providers include children and cancer hospitals, which are held harmless to pre-BBA amounts, and CMHCs.

\*\* Complete DSH numbers are not available for providers that are not paid under IPPS, including rehabilitation, psychiatric, and long-term care hospitals.

15. On page 67022, second column, first full paragraph,

a. Line 13, the figure “1.7” is corrected to read “1.8”.

b. Line 16, the figure “1.7” is corrected to read “1.8”.

c. Line 19, the figure “-0.4” is corrected to read “-0.5”.

16. On page 67023, second column, first partial paragraph,

a. Line 12, the figure “0.9998” is corrected to read “0.9995”.

b. Last line, the figure “\$44.071” is corrected to read “\$44.058”.

17. On page 67024, third column (top third of the page above Table 50), first

partial paragraph, line 1, replace “9” with “11”.

18. On pages 67024 through 67025, Table 51—Estimated Impact of the CY 2015 Update to the ASC Payment System on Aggregate Payments for Selected Procedures, the table is corrected to read as follows:

TABLE 51—ESTIMATED IMPACT OF THE CY 2015 UPDATE TO THE ASC PAYMENT SYSTEM ON AGGREGATE PAYMENTS FOR SELECTED PROCEDURES

CPT/HCPCS code	Short descriptor	Estimated CY 2014 ASC payments (in millions)	Estimated CY 2015 percent change
(1)	(2)	(3)	(4)
66984 .....	Cataract surg w/iol, 1 stage .....	\$1,131	-1
43239 .....	Upper GI endoscopy, biopsy .....	170	11
45380 .....	Colonoscopy and biopsy .....	167	7
45385 .....	Lesion removal colonoscopy .....	107	7
66982 .....	Cataract surgery, complex .....	93	-1
64483 .....	Inj foramen epidural l/s .....	90	0
62311 .....	Inject spine l/s (cd) .....	79	0
45378 .....	Diagnostic colonoscopy .....	72	7
66821 .....	After cataract laser surgery .....	63	3
64493 .....	Inj paravert f jnt l/s 1 lev .....	47	0
G0105 .....	Colorectal scrn; hi risk ind .....	45	1

TABLE 51—ESTIMATED IMPACT OF THE CY 2015 UPDATE TO THE ASC PAYMENT SYSTEM ON AGGREGATE PAYMENTS FOR SELECTED PROCEDURES—Continued

CPT/HCPCS code	Short descriptor	Estimated CY 2014 ASC payments (in millions)	Estimated CY 2015 percent change
(1)	(2)	(3)	(4)
64635	Destroy lumb/sac facet jnt	45	-5
63650	Implant neuroelectrodes	41	4
G0121	Colon ca scrn not hi rsk ind	41	1
64590	Insrt/redo pn/gastr stimul	38	-1
15823	Revision of upper eyelid	35	2
63685	Insrt/redo spine n generator	34	29
29827	Arthroscop rotator cuff repr	34	1
64721	Carpal tunnel surgery	32	-1
29881	Knee arthroscopy/surgery	30	-1
29824	Shoulder arthroscopy/surgery	27	1
29880	Knee arthroscopy/surgery	25	-1
43235	Uppr gi endoscopy diagnosis	23	10
62310	Inject spine c/t	23	0
29823	Shoulder arthroscopy/surgery	22	1
52000	Cystoscopy	22	1
G0260	Inj for sacroiliac jt anesth	21	0
45384	Lesion remove colonoscopy	21	7
67042	Vit for macular hole	21	1
26055	Incise finger tendon sheath	19	-2

Dated: February 18, 2015.

C'Reda Weeden,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2015-03760 Filed 2-23-15; 8:45 am]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Part 600**

[CMS-2391-FN]

RIN 0938-ZB18

**Basic Health Program; Federal Funding Methodology for Program Year 2016**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final methodology.

**SUMMARY:** This document provides the methodology and data sources necessary to determine federal payment amounts made in program year 2016 to states that elect to establish a Basic Health Program under the Affordable Care Act to offer health benefits coverage to low-income individuals otherwise eligible to purchase coverage through Affordable Insurance Exchanges.

**DATES:** These regulations are effective on January 1, 2016.

**FOR FURTHER INFORMATION CONTACT:**

Christopher Truffer, (410) 786-1264; Stephanie Kaminsky (410) 786-4653.

**SUPPLEMENTARY INFORMATION:**

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**Acronyms**

- To assist the reader, the following acronyms are used in this document.
- ΔAV Change in Actuarial Value
  - APTC Advance payment of the premium tax credit
  - ARP Adjusted reference premium
  - AV Actuarial value
  - BHP Basic Health Program
  - CCIO CMS' Center for Consumer Information and Insurance Oversight
  - CDC Centers for Disease Control and Prevention
  - CHIP Children's Health Insurance Program
  - CPI-U Consumer price index for all urban consumers
  - CSR Cost-sharing reduction
  - EHB Essential Health Benefit
  - FPL Federal poverty line
  - FRAC Factor for removing administrative costs
  - IRF Income reconciliation factor
  - IRS Internal Revenue Service
  - IUF Induced utilization factor
  - QHP Qualified health plan
  - OTA Office of Tax Analysis [of the U.S. Department of Treasury]
  - PHF Population health factor
  - PTC Premium tax credit
  - PTCF Premium tax credit formula
  - PTF Premium trend factor
  - RP Reference premium
  - SBM State Based Marketplace
  - TRAF Tobacco rating adjustment factor

**I. Background**

The Patient Protection and Affordable Care Act (Pub. L. 111-148, enacted on March 23, 2010), together with the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152, enacted on March 30, 2010) (collectively referred as the Affordable

Care Act) provides for the establishment of Affordable Insurance Exchanges (Exchanges, also called the Health Insurance Marketplace) that provide access to affordable health insurance coverage offered by qualified health plans (QHPs). Individuals who enroll, or whose family member enrolls, in a QHP cannot be eligible for health coverage under other federally supported health benefits programs or through affordable employer-sponsored insurance coverage and have incomes above 100 percent but no more than 400 percent of the federal poverty line (FPL), or have income below that level but be lawfully present non-citizens ineligible for Medicaid because of immigration status. Individuals enrolled through Marketplaces in coverage offered by QHPs may qualify for the federal premium tax credit (PTC) or federally-funded cost-sharing reductions (CSRs) based on their household income, to make coverage affordable.

In the states that elect to operate a Basic Health Program (BHP), BHP will make affordable health benefits coverage available for individuals under age 65 with household incomes between 133 percent and 200 percent of the FPL who are not otherwise eligible for Medicaid, the Children's Health Insurance Program (CHIP), or affordable employer-sponsored coverage. (For those states that have expanded Medicaid coverage under section 1902(a)(10)(A)(i)(VIII) of the Social Security Act (the Act), the lower income threshold for BHP eligibility is effectively 138 percent due to the application of a required 5 percent income disregard in determining the upper limits of Medicaid income eligibility (section 1902(e)(14)(I) of the Act).) Federal funding will be available for BHP based on the amount of PTC and CSRs that BHP enrollees would have received had they been enrolled in QHPs through Marketplaces.

In the March 12, 2014 **Federal Register** (79 FR 14112), we published a final rule entitled the "Basic Health Program; State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; Performance Standards for Basic Health Programs; Premium and Cost Sharing for Basic Health Programs; Federal Funding Process; Trust Fund and Financial Integrity" (hereinafter referred to as the BHP final rule) implementing section 1331 of the Affordable Care Act), which directs the establishment of BHP. The BHP final rule establishes the standards for state and federal administration of BHP, including provisions regarding

eligibility and enrollment, benefits, cost-sharing requirements and oversight activities. While the BHP final rule codifies the overall statutory requirements and basic procedural framework for the funding methodology, it does not contain the specific information necessary to determine federal payments. We anticipated that the methodology would be based on data and assumptions that would reflect ongoing operations and experience of BHP programs, as well as the operation of the Marketplaces. For this reason, the BHP final rule indicated that the development and publication of the funding methodology, including any data sources, would be addressed in a separate annual BHP Payment Notice.

In the BHP final rule, we specified that the BHP Payment Notice process would include the annual publication of both a proposed and final BHP Payment Notice. The proposed BHP Payment Notice would be published in the **Federal Register** each October, and would describe the proposed methodology for the upcoming BHP program year, including how the Secretary considered the factors specified in section 1331(d)(3) of the Affordable Care Act, along with the proposed data sources used to determine the federal BHP payment rates. The final BHP Payment Notice would be published in the **Federal Register** in February, and would include the final BHP funding methodology, as well as the federal BHP payment rates for the next BHP program year. For example, payment rates published in February 2015 would apply to BHP program year 2016, beginning in January 2016. As discussed in section III.C of this methodology, state data needed to calculate the federal BHP payment rates for the final BHP Payment Notice must be submitted to CMS.

As described in the BHP final rule, once the final methodology has been published, we will only make modifications to the BHP funding methodology on a prospective basis with limited exceptions. The BHP final rule provided that retrospective adjustments to the state's BHP payment amount may occur to the extent that the prevailing BHP funding methodology for a given program year permits adjustments to a state's federal BHP payment amount due to insufficient data for prospective determination of the relevant factors specified in the payment notice. Additional adjustments could be made to the payment rates to correct errors in applying the methodology (such as mathematical errors).

Under section 1331(d)(3)(ii) of the Affordable Care Act, the funding methodology and payment rates are expressed as an amount per BHP enrollee for each month of enrollment. These payment rates may vary based on categories or classes of enrollees. Actual payment to a state would depend on the actual enrollment in coverage through the state BHP. A state that is approved to implement BHP must provide data showing quarterly enrollment in the various federal BHP payment rate cells. The data submission requirements associated with this will be published subsequent to the proposed methodology.

## II. Summary of Proposed Provisions and Analysis of and Responses to Public Comments on the Proposed Methodology

The following sections, arranged by subject area, include a summary of the public comments that we received, and our responses. For a complete and full description of the BHP proposed funding methodology, see the "Basic Health Program; Federal Funding Methodology for Program Year 2016" proposed methodology published in the October 23, 2014 **Federal Register** (79 FR 63363).

We received a total of 3 timely comments from individuals and groups advocating on behalf of consumers and health care providers. The public comments received ranged from general support or opposition to the proposed methodology and BHP to specific comments regarding the proposed methodological factors.

### A. Background

In the October 23, 2014 (79 FR 63363) proposed methodology, we specified the methodology of how the federal BHP payments would be calculated. For specific discussions, please refer to the October 23, 2014 proposed methodology (79 FR 63363).

We received the following comments on the background information included in the proposed methodology:

*Comment:* Some commenters expressed general opposition to BHP and the payment methodology.

*Response:* The comments were outside the scope of the BHP program and payment methodology.

*Final Decision:* After careful consideration of the public comments, we are finalizing our proposed methodology for how the federal BHP payments will be calculated.

### *B. Overview of the Funding Methodology and Calculation of the Payment Amount*

We proposed in the overview of the funding methodology to calculate the PTC and CSR as consistently as possible and in general alignment with the methodology used by Marketplaces to calculate the advance payments of the PTC and CSR, and by the Internal Revenue Service (IRS) to calculate the final PTC. We proposed in this section four equations that comprise the overall BHP funding methodology. For specific discussions, please refer to the October 23, 2014 proposed methodology (79 FR 63363).

We received no comments regarding the overview of the funding methodology and calculation of the payment amount. We are finalizing the BHP overview of the funding methodology and the payment amount for FY 2016.

### *C. Required Rate Cells*

In this section, we proposed that a state implementing BHP provide us with an estimate of the number of BHP enrollees it will enroll in the upcoming BHP program, by applicable rate cell, to determine the federal BHP payment amounts. For each state, we proposed using rate cells that separate the BHP population into separate cells based on the following five factors: age; geographic rating area; coverage status; household size; and income. For specific discussions, please refer to the October 23, 2014 proposed methodology (79 FR 63363).

We received the following comment on the proposed rate cells:

*Comment:* One commenter expressed concern that defining geographic rating areas as counties would not capture potential differences in health care costs and qualified health plan premiums in different parts of the county, and recommended defining the rating area by zip code instead.

*Response:* We believe that this is unlikely to have a significant impact on the federal BHP payment. In addition, we believe that it would make state operation of the program substantially more challenging.

*Final Decision:* After careful consideration of the comments, we are finalizing the criteria and definitions of the rate cells to determine the federal BHP payment amounts for FY 2016.

### *D. Sources and State Data Considerations*

We proposed in this section to use, to the extent possible, data submitted to the federal government by QHP issuers

seeking to offer coverage through a Marketplace to determine the federal BHP payment cell rates. However, in states operating a State Based Marketplace (SBM), we proposed that such states submit required data for CMS to calculate the federal BHP payment rates in those states. For specific discussions, please refer to the October 23, 2014 proposed methodology (79 FR 63363).

We did not receive any comments on the “Sources and State Data Considerations” section and are finalizing the BHP methodology as proposed.

### *E. Discussion of Specific Variables Used in Payment Equations*

In this section, we proposed 11 specific variables to use in the payment equations that comprise the overall BHP funding methodology. (10 variables are described in section III.D of this document, and the premium trend factor is described in section III.F.) For each proposed variable, we included a discussion on the assumptions and data sources used in developing the variables. For specific discussions, please refer to the October 23, 2014 proposed methodology (79 FR 63363).

We did not receive any comments on the “Specific Variables Used in Payment Equations” section and are finalizing the BHP methodology as proposed.

### *F. Adjustments for American Indians and Alaska Natives*

We proposed to make several adjustments for American Indians and Alaska Natives when calculating the CSR portion of the federal BHP payment rate to be consistent with the Marketplace rules. For specific discussions, please refer to the October 23, 2014 proposed methodology (79 FR 63363).

We did not receive any comments on the “Adjustments for American Indians and Alaska Natives” section and are finalizing the BHP methodology as proposed.

### *G. State Option to Use 2015 QHP Premiums for BHP Payments*

In this section, we proposed to provide states implementing BHP with the option to use the 2015 QHP premiums multiplied by a premium trend factor to calculate the federal BHP payment rates instead of using the 2016 QHP premiums. For specific discussions, please refer to the October 23, 2014 proposed methodology (79 FR 63363).

We did not receive any comments on the “State Option to Use 2015 QHP Premiums for BHP Payments” section

and are finalizing the BHP methodology as proposed.

### *H. State Option To Include Retrospective State-Specific Health Risk Adjustment in Certified Methodology*

In this section, we proposed to provide states implementing BHP the option to develop a methodology to account for the impact that including the BHP population in the Marketplace would have had on QHP premiums based on any differences in health status between the BHP population and persons enrolled through the Marketplace. For specific discussions, please refer to the October 23, 2014 proposed methodology (79 FR 63363).

We did not receive any comments on the “State Option to Include Retrospective State-specific Health Risk Adjustment in Certified Methodology” section and are finalizing the BHP methodology as proposed.

## **III. Provisions of the Final Methodology**

### *A. Overview of the Funding Methodology and Calculation of the Payment Amount*

Section 1331(d)(3) of the Affordable Care Act directs the Secretary to consider several factors when determining the federal BHP payment amount, which, as specified in the statute, must equal 95 percent of the value of the PTC and CSRs that BHP enrollees would have been provided had they enrolled in a QHP through a Marketplace. Thus, the BHP funding methodology is designed to calculate the PTC and CSRs as consistently as possible and in general alignment with the methodology used by Marketplaces to calculate the advance payments of the PTC and CSRs, and by the IRS to calculate final PTCs. In general, we rely on values for factors in the payment methodology specified in statute or other regulations as available, and we have developed values for other factors not otherwise specified in statute, or previously calculated in other regulations, to simulate the values of the PTC and CSRs that BHP enrollees would have received if they had enrolled in QHPs offered through a Marketplace. In accordance with section 1331(d)(3)(A)(iii) of the Affordable Care Act, the final funding methodology must be certified by CMS’ Chief Actuary, in consultation with the Office of Tax Analysis (OTA) of the Department of the Treasury, as having met the requirements of section 1331(d)(3)(A)(ii) of the Affordable Care Act.

Section 1331(d)(3)(A)(ii) of the Affordable Care Act specifies that the



payment determination “shall take into account all relevant factors necessary to determine the value of the premium tax credits and cost-sharing reductions that would have been provided to eligible individuals . . . including the age and income of the enrollee, whether the enrollment is for self-only or family coverage, geographic differences in average spending for health care across rating areas, the health status of the enrollee for purposes of determining risk adjustment payments and reinsurance payments that would have been made if the enrollee had enrolled in a qualified health plan through a Marketplace, and whether any reconciliation of the credit or cost-sharing reductions would have occurred if the enrollee had been so enrolled.” The payment methodology takes each of these factors into account. This methodology is the same as the 2015 payment methodology, with updated values but no changes in methods.

We have developed a methodology that the total federal BHP payment amount would be based on multiple “rate cells” in each state. Each “rate cell” represents a unique combination of age range, geographic area, coverage category (for example, self-only or two-adult coverage through BHP), household size, and income range as a percentage of FPL. Thus, there are distinct rate cells for individuals in each coverage category within a particular age range who reside in a specific geographic area and are in households of the same size and income range. We note that the development of the BHP payment rates will be consistent with each state’s rules on age rating. Thus, in the case of a state that does not use age as a rating factor on the Marketplace, the BHP payment rates would not vary by age.

The rate for each rate cell will be calculated in two parts. The first part (as described in Equation (1)) will equal 95 percent of the estimated PTC that would have been paid if a BHP enrollee in that rate cell had instead enrolled in a QHP in the Marketplace. The second part (as described in Equation (2)) will equal 95 percent of the estimated CSR payment that would have been made if a BHP enrollee in that rate cell had instead enrolled in a QHP in the Marketplace. These 2 parts will be added together and the total rate for that rate cell will be equal to the sum of the PTC and CSR rates.

To calculate the total federal BHP payment, Equation (1) will be used to calculate the estimated PTC for individuals in each rate cell and Equation (2) will be used to calculate the estimated CSR payments for individuals in each rate cell. By applying the equations separately to rate cells based on age, income and other factors, we effectively take those factors into account in the calculation. In addition, the equations take into account additional relevant variables that are needed to determine the estimated PTC and CSR payments for individuals in each rate cell. Each of the variables in the equations is defined below, and further detail is provided later in this section of the payment notice.

In addition, we describe how we will calculate the adjusted reference premium (described later in this section of the payment methodology) that is used in Equations (1) and (2). This is defined in Equation (3a) and Equation (3b).

#### Equation 1: Estimated PTC by Rate Cell

The estimated PTC, on a per enrollee basis, will be calculated for each rate

cell for each state based on age range, geographic area, coverage category, household size, and income range. The PTC portion of the rate will be calculated in a manner consistent with the methodology used to calculate the PTC for persons enrolled in a QHP, with 3 adjustments. First, the PTC portion of the rate for each rate cell will represent the mean, or average, expected PTC that all persons in the rate cell would receive, rather than being calculated for each individual enrollee. Second, the reference premium used to calculate the PTC (described in more detail later in the section) will be adjusted for BHP population health status, and in the case of a state that elects to use 2015 premiums for the basis of the BHP federal payment, for the projected change in the premium from the 2015 to 2016, to which the rates announced in the final payment methodology would apply. These adjustments are described in Equation (3a) and Equation (3b). Third, the PTC will be adjusted prospectively to reflect the mean, or average, net expected impact of income reconciliation on the combination of all persons enrolled in BHP; this adjustment, as described in section III.D.5 of this methodology, will account for the impact on the PTC that would have occurred had such reconciliation been performed. Finally, the rate is multiplied by 95 percent, consistent with section 1331(d)(3)(A)(i) of the Affordable Care Act. We note that in the situation where the average income contribution of an enrollee would exceed the adjusted reference premium, we will calculate the PTC to be equal to 0 and would not allow the value of the PTC to be negative.

Consistent with this description, equation (1) is defined as:

$$\text{Equation (1): } PTC_{a,g,c,h,i} = \left[ ARP_{a,g,c} - \frac{\sum_j I_{h,i,j} \times PTCF_{h,i,j}}{n} \right] \times IRF \times 95\%$$

$PTC_{a,g,c,h,i}$  = Premium tax credit portion of BHP payment rate

$a$  = Age range

$g$  = Geographic area

$c$  = Coverage status (self-only or applicable category of family coverage) obtained through BHP

$h$  = Household size

$i$  = Income range (as percentage of FPL)

$ARP_{a,g,c}$  = Adjusted reference premium

$I_{h,i,j}$  = Income (in dollars per month) at each 1 percentage-point increment of FPL

$j$  =  $j^{\text{th}}$  percentage-point increment FPL

$n$  = Number of income increments used to calculate the mean PTC

$PTCF_{h,i,j}$  = Premium Tax Credit Formula percentage

$IRF$  = Income reconciliation factor

#### Equation 2: Estimated CSR Payment by Rate Cell

The CSR portion of the rate will be calculated for each rate cell for each state based on age range, geographic area, coverage category, household size, and income range defined as a percentage of FPL. The CSR portion of the rate will be calculated in a manner consistent with the methodology used to calculate the CSR advance payments for persons enrolled in a QHP, as described in the final rule we published in the

**Federal Register** on March 11, 2014 entitled “HHS Notice of Benefit and Payment Parameters for 2015” final rule (79 FR 13744), with 3 principal adjustments. (We will make a separate calculation that includes different adjustments for American Indian/Alaska Native BHP enrollees, as described in section III.D.1 of this methodology.) For the first adjustment, the CSR rate, like the PTC rate, will represent the mean expected CSR subsidy that would be paid on behalf of all persons in the rate cell, rather than being calculated for each individual enrollee. Second, this

calculation will be based on the adjusted reference premium, as described in section III.A.3 of this methodology. Third, this equation uses an adjusted reference premium that reflects premiums charged to non-tobacco users, rather than the actual premium that is charged to tobacco

users to calculate CSR advance payments for tobacco users enrolled in a QHP. Accordingly, the equation includes a tobacco rating adjustment factor that would account for BHP enrollees' estimated tobacco-related health costs that are outside the premium charged to non-tobacco-users.

Finally, the rate will be multiplied by 95 percent, as provided in section 1331(d)(3)(A)(i) of the Affordable Care Act.

Consistent with the methodology described above, equation (2) is defined as:

$$\text{Equation (2): } CSR_{a,g,c,h,i} = \frac{ARP_{a,g,c} \times TRAF \times FRAC}{AV} \times IUF_{h,i} \times \Delta AV_{h,i} \times 95\%$$

$CSR_{a,g,c,h,i}$  = Cost-sharing reduction subsidy portion of BHP payment rate  
 $a$  = Age range  
 $g$  = Geographic area  
 $c$  = Coverage status (self-only or applicable category of family coverage) obtained through BHP  
 $h$  = Household size  
 $i$  = Income range (as percentage of FPL)  
 $ARP_{a,g,c}$  = Adjusted reference premium  
 $TRAF$  = Tobacco rating adjustment factor  
 $FRAC$  = Factor removing administrative costs  
 $AV$  = Actuarial value of plan (as percentage of allowed benefits covered by the applicable QHP without a cost-sharing reduction subsidy)  
 $IUF_{h,i}$  = Induced utilization factor  
 $\Delta AV_{h,i}$  = Change in actuarial value (as percentage of allowed benefits)

Equation 3a and Equation 3b: Adjusted Reference Premium Variable (Used in Equations 1 and 2)

As part of these calculations for both the PTC and CSR components, the value of the adjusted reference premium as described below. Consistent with the approach last year, we will allow states to choose between using the actual 2016 QHP premiums or the 2015 QHP premiums multiplied by the premium trend factor (as described in section III.F of this methodology). Therefore, we describe below how we would calculate the adjusted reference premium under each option.

In the case of a state that elects to use the reference premium based on the 2016 premiums, we will calculate the value of the adjusted reference premium as specified in Equation (3a). The adjusted reference premium will be equal to the reference premium, which will be based on the second lowest cost silver plan premium in 2016, multiplied by the BHP population health factor (described in section III.D of this methodology), which will reflect the projected impact that enrolling BHP-eligible individuals in QHPs on a Marketplace would have had on the average QHP premium.

$$\text{Equation (3a): } ARP_{a,g,c} = RP_{a,g,c} \times PHF$$

$ARP_{a,g,c}$  = Adjusted reference premium  
 $a$  = Age range  
 $g$  = Geographic area  
 $c$  = Coverage status (self-only or applicable category of family coverage) obtained through BHP  
 $RP_{a,g,c}$  = Reference premium  
 $PHF$  = Population health factor

In the case of a state that elects to use the reference premium based on the 2015 premiums (as described in section

III.F of this methodology), we will calculate the value of the adjusted reference premium as specified in Equation (3b). The adjusted reference premium will be equal to the reference premium, which will be based on the second lowest cost silver plan premium in 2015, multiplied by the BHP population health factor (described in section III.D of this methodology), which will reflect the projected impact

that enrolling BHP-eligible individuals in QHPs on a Marketplace would have had on the average QHP premium, and by the premium trend factor, which will reflect the projected change in the premium level between 2015 and 2016 (including the estimated impact of changes resulting from the transitional reinsurance program established in section 1341 of the Affordable Care Act).

$$\text{Equation (3b): } ARP_{a,g,c} = RP_{a,g,c} \times PHF \times PTF$$

$ARP_{a,g,c}$  = Adjusted reference premium  
 $a$  = Age range  
 $g$  = Geographic area  
 $c$  = Coverage status (self-only or applicable category of family coverage) obtained through BHP  
 $RP_{a,g,c}$  = Reference premium  
 $PHF$  = Population health factor

$PTF$  = Premium trend factor

Equation 4: Determination of Total Monthly Payment for BHP Enrollees in Each Rate Cell

In general, the rate for each rate cell will be multiplied by the number of

BHP enrollees in that cell (that is, the number of enrollees that meet the criteria for each rate cell) to calculate the total monthly BHP payment. This calculation is shown in Equation 4 below.

$$\text{Equation (4): } PMT = \sum [(PTC_{a,g,c,h,i} + CSR_{a,g,c,h,i}) \times E_{a,g,c,h,i}]$$

$PMT$  = Total monthly BHP payment  
 $PTC_{a,g,c,h,i}$  = Premium tax credit portion of BHP payment rate

$CSR_{a,g,c,h,i}$  = Cost-sharing reduction subsidy portion of BHP payment rate  
 $E_{a,g,c,h,i}$  = Number of BHP enrollees

$a$  = Age range  
 $g$  = Geographic area

*c* = Coverage status (self-only or applicable category of family coverage) obtained through BHP

*h* = Household size

*i* = Income range (as percentage of FPL)

### B. Federal BHP Payment Rate Cells

We will require that a state implementing BHP provide us an estimate of the number of BHP enrollees it projects will enroll in the upcoming BHP program year, by applicable rate cell, prior to the first quarter of program operations. Upon our approval of such estimates as reasonable, they will be used to calculate the prospective payment for the first and subsequent quarters of program operation until the state has provided us actual enrollment data. These data will be required to calculate the final BHP payment amount, and make any necessary reconciliation adjustments to the prior quarters' prospective payment amounts due to differences between projected and actual enrollment. In subsequent quarters, quarterly deposits to the state's trust fund will be based on the most recent actual enrollment data submitted to us. Procedures will ensure that federal payments to a state reflect actual BHP enrollment during a year, within each applicable category, and prospectively determined federal payment rates for each category of BHP enrollment, with such categories defined in terms of age range, geographic area, coverage status, household size, and income range, as explained above.

We will require the use of certain rate cells as part of the methodology. For each state, we will use rate cells that separate the BHP population into separate cells based on the five factors described below.

**Factor 1—Age:** We will separate enrollees into rate cells by age, using the following age ranges that capture the widest variations in premiums under HHS's Default Age Curve:<sup>1</sup>

- Ages 0–20.
- Ages 21–34.
- Ages 35–44.
- Ages 45–54.
- Ages 55–64.

**Factor 2—Geographic area:** For each state, we will separate enrollees into rate cells by geographic areas within which a single reference premium is charged by QHPs offered through the state's Marketplace. Multiple, non-contiguous geographic areas will be incorporated within a single cell, so long as those areas share a common reference premium.<sup>2</sup>

**Factor 3—Coverage status:** We will separate enrollees into rate cells by coverage status, reflecting whether an individual is enrolled in self-only coverage or persons are enrolled in family coverage through BHP, as provided in section 1331(d)(3)(A)(ii) of the Affordable Care Act. Among recipients of family coverage through BHP, separate rate cells, as explained below, will apply based on whether such coverage involves two adults alone or whether it involves children.

**Factor 4—Household size:** We will separate enrollees into rate cells by household size that states use to determine BHP enrollees' income as a percentage of the FPL under 42 CFR 600.320. We will require separate rate cells for several specific household sizes. For each additional member above the largest specified size, we will publish instructions for how we will develop additional rate cells and calculate an appropriate payment rate based on data for the rate cell with the closest specified household size. We will publish separate rate cells for household sizes of 1, 2, 3, 4, and 5, as unpublished analyses of American Community Survey data conducted by the Urban Institute, which take into account unaccepted offers of employer-sponsored insurance, as well as income, Medicaid and CHIP eligibility, citizenship and immigration status, and current health coverage status, find that less than 1 percent of all BHP-eligible persons live in households of size 5 or greater.

**Factor 5—Income:** For households of each applicable size, we will create

separate rate cells by income range, as a percentage of FPL. The PTC that a person would receive if enrolled in a QHP varies by income, both in level and as a ratio to the FPL, and the CSR varies by income as a percentage of FPL. Thus, separate rate cells will be used to calculate federal BHP payment rates to reflect different bands of income measured as a percentage of FPL. We will use the following income ranges, measured as a ratio to the FPL:

- 0 to 50 percent of the FPL.
- 51 to 100 percent of the FPL.
- 101 to 138 percent of the FPL.<sup>3</sup>
- 139 to 150 percent of the FPL.
- 151 to 175 percent of the FPL.
- 176 to 200 percent of the FPL.

These rate cells will only be used to calculate the federal BHP payment amount. A state implementing BHP will not be required to use these rate cells or any of the factors in these rate cells as part of the state payment to the standard health plans participating in BHP or to help define BHP enrollees' covered benefits, premium costs, or out-of-pocket cost-sharing levels.

We will use averages to define federal payment rates, both for income ranges and age ranges, rather than varying such rates to correspond to each individual BHP enrollee's age and income level. We believe that this approach will increase the administrative feasibility of making federal BHP payments and reduce the likelihood of inadvertently erroneous payments resulting from highly complex methodologies. We believe that this approach will not significantly change federal payment amounts, since within applicable ranges; the BHP-eligible population is distributed relatively evenly.

### C. Sources and State Data Considerations

To the extent possible, we will use data submitted to the federal government by QHP issuers seeking to offer coverage through a Marketplace to perform the calculations that determine federal BHP payment cell rates.

States operating a State Based Marketplace in the individual market, however, must provide certain data, including premiums for second lowest cost silver plans, by geographic area, in order for CMS to calculate the federal BHP payment rates in those states. We will require that a state operating a State Based Marketplace and interested in obtaining the applicable federal BHP payment rates for its state must submit

<sup>1</sup> This curve is used to implement the Affordable Care Act's 3:1 limit on age-rating in states that do not create an alternative rate structure to comply with that limit. The curve applies to all individual market plans, both within and outside the Exchange. The age bands capture the principal allowed age-based variations in premiums as permitted by this curve. More information can be found at <http://www.cms.gov/CCIIO/Resources/Files/Downloads/market-reforms-guidance-2-25-2013.pdf>. Both children and adults under age 21 are charged the same premium. For adults age 21–64, the age bands in this methodology divide the total age-based premium variation into the three most equally-sized ranges (defining size by the ratio between the highest and lowest premiums within the band) that are consistent with the age-bands used for risk-adjustment purposes in the HHS-Developed Risk Adjustment Model. For such age bands, see Table 5, "Age-Sex Variables," in HHS-Developed Risk Adjustment Model Algorithm

Software, June 2, 2014, <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/ra-tables-03-27-2014.xlsx>.

<sup>2</sup> For example, a cell within a particular state might refer to "County Group 1," "County Group 2," etc., and a table for the state would list all the counties included in each such group. These geographic areas are consistent with the geographic areas established under the 2014 Market Reform Rules. They also reflect the service area requirements applicable to qualified health plans, as described in 45 CFR 155.1055, except that service areas smaller than counties are addressed as explained below.

<sup>3</sup> The three lowest income ranges would be limited to lawfully present immigrants who are ineligible for Medicaid because of immigration status.

such data accurately, completely, and as specified by CMS, by no later than October 15, 2015, for CMS to calculate the applicable rates for 2016. If additional state data (that is, in addition to the second lowest cost silver plan premium data) are needed to determine the federal BHP payment rate, such data must be submitted in a timely manner, and in a format specified by CMS to support the development and timely release of annual BHP payment notices. The specifications for data collection to support the development of BHP payment rates for 2016 were published in CMS guidance and are available at <http://www.medicaid.gov/Federal-Policy-Guidance/Federal-Policy-Guidance.html>.

If a state operating a SBM provides the necessary data accurately, completely, and as specified by CMS, but after the date specified above, we anticipate publishing federal payment rates for such a state in a subsequent Payment Notice. As noted in the BHP final rule, a state may elect to implement its BHP after a program year has begun. In such an instance, we require that the state, if operating a SBM, submit its data no later than 30 days after the Blueprint submission for CMS to calculate the applicable federal payment rates. We further require that the BHP Blueprint itself must be submitted for Secretarial certification with an effective date of no sooner than 120 days after submission of the BHP Blueprint. In addition, the state must ensure that its Blueprint includes a detailed description of how the state will coordinate with other insurance affordability programs to transition and transfer BHP-eligible individuals out of their existing QHP coverage, consistent with the requirements set forth in 42 CFR 600.330 and 600.425. We believe that this 120-day period is necessary to establish the requisite administrative structures and ensure that all statutory and regulatory requirements are satisfied.

#### *D. Discussion of Specific Variables Used in Payment Equations*

##### 1. Reference Premium (RP)

To calculate the estimated PTC that would be paid if individuals enrolled in QHPs through the Marketplace, we must calculate a reference premium (RP) because the PTC is based, in part, on the premiums for the applicable second lowest cost silver plan as explained in section III.C.4 of this methodology, regarding the Premium Tax Credit Formula (PTCF). Accordingly, for the purposes of calculating the BHP payment rates, the reference premium,

in accordance with 26 U.S.C. 36B(b)(3)(C), is defined as the adjusted monthly premium for an applicable second lowest cost silver plan. The applicable second lowest cost silver plan is defined in 26 U.S.C. 36B(b)(3)(B) as the second lowest cost silver plan of the individual market in the rating area in which the taxpayer resides, which is offered through the same Marketplace. We will use the adjusted monthly premium for an applicable second lowest cost silver plan in 2016 as the reference premium (except in the case of a state that elects to use the 2015 premium as the basis for the federal BHP payment, as described in section III.F of this methodology).

The reference premium will be the premium applicable to non-tobacco users. This is consistent with the provision in 26 U.S.C. 36B(b)(3)(C) that bases the PTC on premiums that are adjusted for age alone, without regard to tobacco use, even for states that allow insurers to vary premiums based on tobacco use pursuant to 42 U.S.C. 300gg(a)(1)(A)(iv).

Consistent with the policy set forth in 26 CFR 1.36B-3(f)(6) to calculate the PTC for those enrolled in a QHP through a Marketplace, we will not update the payment methodology, and subsequently the federal BHP payment rates, in the event that the second lowest cost silver plan used as the reference premium, or the lowest cost silver plan, changes (that is, terminates or closes enrollment during the year).

The applicable second lowest cost silver plan premium will be included in the BHP payment methodology by age range, geographic area, and self-only or applicable category of family coverage obtained through BHP.

American Indians and Alaska Natives in households with incomes below 300 percent of the FPL are eligible for a full cost sharing subsidy regardless of the plan they select (as described in sections 1402(d) and 2901(a) of the Affordable Care Act). We assume that American Indians and Alaska Natives would be more likely to enroll in bronze plans as a result; thus, for American Indian/Alaska Native BHP enrollees, we will use the lowest cost bronze plan as the basis for the reference premium for the purposes of calculating the CSR portion (but not the PTC portion) of the federal BHP payment as described further in section III.E of this methodology.

The applicable age bracket will be one dimension of each rate cell. We will assume a uniform distribution of ages and estimate the average premium amount within each rate cell. We believe that assuming a uniform

distribution of ages within these ranges is a reasonable approach and would produce a reliable determination of the PTC and CSR components. We also believe this approach would avoid potential inaccuracies that could otherwise occur in relatively small payment cells if age distribution were measured by the number of persons eligible or enrolled.

We will use geographic areas based on the rating areas used in the Marketplaces. We will define each geographic area so that the reference premium is the same throughout the geographic area. When the reference premium varies within a rating area, we will define geographic areas as aggregations of counties with the same reference premium. Although plans are allowed to serve geographic areas smaller than counties after obtaining our approval, no geographic area, for purposes of defining BHP payment rate cells, will be smaller than a county. We do not believe that this assumption will have a significant impact on federal payment levels and it would likely simplify both the calculation of BHP payment rates and the operation of BHP.

Finally, in terms of the coverage category, federal payment rates will only recognize self-only and two-adult coverage, with exceptions that account for children who are potentially eligible for BHP. First, in states that set the upper income threshold for children's Medicaid and CHIP eligibility below 200 percent of FPL (based on modified adjusted gross income), children in households with incomes between that threshold and 200 percent of FPL would be potentially eligible for BHP. Currently, the only states in this category are Arizona, Idaho, and North Dakota.<sup>4</sup> Second, BHP would include lawfully present immigrant children with incomes at or below 200 percent of FPL in states that have not exercised the option under the sections 1903(v)(4)(A)(ii) and 2107(e)(1)(E) of the Act to qualify all otherwise eligible, lawfully present immigrant children for Medicaid and CHIP. States that fall within these exceptions would be identified based on their Medicaid and CHIP State Plans, and the rate cells would include appropriate categories of BHP family coverage for children. In other states, BHP eligibility will generally be restricted to adults, since children who are citizens or lawfully present immigrants and who live in households with incomes at or below 200 percent of FPL will qualify for Medicaid or CHIP and thus be ineligible

<sup>4</sup> CMCS. "State Medicaid and CHIP Income Eligibility Standards Effective January 1, 2014."

for BHP under section 1331(e)(1)(C) of the Affordable Care Act, which limits BHP to individuals who are ineligible for minimum essential coverage (as defined in section 5000A(f) of the Internal Revenue Code of 1986).

## 2. Population Health Factor (PHF)

We include the population health factor in the methodology to account for the potential differences in the average health status between BHP enrollees and persons enrolled in the Marketplace. To the extent that BHP enrollees would have been enrolled in the Marketplace in the absence of BHP in a state, the inclusion of those BHP enrollees in the Marketplace may affect the average health status of the overall population and the expected QHP premiums.

We currently do not believe that there is evidence that the BHP population would have better or poorer health status than the Marketplace population. At this time, there is a lack of experience available in the Marketplace that limits the ability to analyze the health differences between these groups of enrollees. In addition, differences in population health may vary across states. Thus, at this time, we believe that it is not feasible to develop a methodology to make a prospective adjustment to the population health factor that is reliably accurate.

Given these analytic challenges and the limited data about Marketplace coverage and the characteristics of BHP-eligible consumers that will be available by the time we establish federal payment rates for 2016, we believe that the most appropriate adjustment for 2016 would be 1.00.

In the 2015 payment methodology, we included an option for states to include a retrospective population health status adjustment. Similarly, we will provide the states with the same option for the 2016 payment methodology, as described further in section III.G of this methodology, to include a retrospective population health status adjustment in the certified methodology, which is subject to CMS review and approval.

While the statute requires consideration of risk adjustment payments and reinsurance payments insofar as they would have affected the PTC and CSRs that would have been provided to BHP-eligible individuals had they enrolled in QHPs, we will not require that a BHP program's standard health plans receive such payments. As explained in the BHP final rule, BHP standard health plans are not included in the risk adjustment program operated by HHS on behalf of states. Further, standard health plans do not qualify for

payments from the transitional reinsurance program established under section 1341 of the Affordable Care Act.<sup>5</sup> To the extent that a state operating a BHP determines that, because of the distinctive risk profile of BHP-eligible consumers, BHP standard health plans should be included in mechanisms that share risk with other plans in the state's individual market, the state would need to use other methods for achieving this goal.

## 3. Income (I)

Household income is a significant determinant of the amount of the PTC and CSRs that are provided for persons enrolled in a QHP through the Marketplace. Accordingly, the BHP payment methodology incorporates income into the calculations of the payment rates through the use of income-based rate cells. We define income in accordance with the definition of modified adjusted gross income in 26 U.S.C. 36B(d)(2)(B) and consistent with the definition in 45 CFR 155.300. Income would be measured relative to the FPL, which is updated periodically in the **Federal Register** by the Secretary under the authority of 42 U.S.C. 9902(2), based on annual changes in the consumer price index for all urban consumers (CPI-U). In this methodology, household size and income as a percentage of FPL would be used as factors in developing the rate cells. We will use the following income ranges measured as a percentage of FPL:<sup>6</sup>

- 0–50 percent.
- 51–100 percent.
- 101–138 percent.
- 139–150 percent.
- 151–175 percent.
- 176–200 percent.

We will assume a uniform income distribution for each federal BHP payment cell. We believe that assuming a uniform income distribution for the income ranges would be reasonably accurate for the purposes of calculating the PTC and CSR components of the BHP payment and would avoid potential errors that could result if other sources of data were used to estimate the specific income distribution of

<sup>5</sup> See 45 CFR 153.400(a)(2)(iv) (BHP standard health plans are not required to submit reinsurance contributions), 153.20 (definition of "Reinsurance-eligible plan" as not including "health insurance coverage not required to submit reinsurance contributions"), § 153.230(a) (reinsurance payments under the national reinsurance parameters are available only for "Reinsurance-eligible plans").

<sup>6</sup> These income ranges and this analysis of income apply to the calculation of the PTC. Many fewer income ranges and a much simpler analysis apply in determining the value of CSRs, as specified below.

persons who are eligible for or enrolled in BHP within rate cells that may be relatively small. Thus, when calculating the mean, or average, PTC for a rate cell, we will calculate the value of the PTC at each one percentage point interval of the income range for each federal BHP payment cell and then calculate the average of the PTC across all intervals. This calculation will rely on the PTC formula described below in section III.4 of this methodology.

As the PTC for persons enrolled in QHPs will be calculated based on their income during the open enrollment period, and that income will be measured against the FPL at that time, we will adjust the FPL by multiplying the FPL by a projected increase in the CPI-U between the time that the BHP payment rates are published and the QHP open enrollment period, if the FPL is expected to be updated during that time. The projected increase in the CPI-U would be based on the intermediate inflation forecasts from the most recent OASDI and Medicare Trustees Reports.<sup>7</sup>

## 4. Premium Tax Credit Formula (PTCF)

The PTC amount for a person enrolled in a QHP through a Marketplace is calculated in accordance with the methodology described in 26 U.S.C. 36B(b)(2). The amount is equal to the lesser of the premium for the plan in which the person or household enrolls (the enrollment premiums) or adjusted premium for the applicable second lowest cost silver plan minus the contribution amount.

In Equation 1 described in section III.A.1 of this methodology, we will use the formula described in 26 U.S.C. 36B(b) to calculate the contribution amount, which is needed to estimate the PTC for a person enrolled in a QHP on a Marketplace. This formula determines the contribution amount as a percentage of household income. The percentage is based on the FPL for the household income and family size, and is shown in the schedule specified in 26 U.S.C. 36B(b)(3)(A) and shown below. The difference between the contribution amount and the adjusted monthly premium for the applicable second lowest cost silver plan is the estimated amount of the PTC that would be provided for the enrollee (assuming that this amount is less than the enrollment premiums).

The applicable percentage is defined in 26 U.S.C. 36B(b)(3)(A) and 26 CFR 1.36B-3(g) as the percentage that

<sup>7</sup> See Table IV A1 from the 2014 reports in <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/TR2014.pdf>.

applies to a taxpayer's household income that is within an income tier specified in the table, increasing on a

sliding scale in a linear manner from an initial premium percentage to a final

premium percentage specified in the table (see Table 1):

TABLE 1—HOUSEHOLD INCOME  
[Expressed as a percent of poverty line]

In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 133% .....	2.01	2.01
133% but less than 150% .....	3.02	4.02
150% but less than 200% .....	4.02	6.34
200% but less than 250% .....	6.34	8.10
250% but less than 300% .....	8.10	9.56
300% but not more than 400% .....	9.56	9.56

These are the applicable percentages for CY 2015. The applicable percentages will be updated in future years in accordance with 26 U.S.C. 36B(b)(3)(A)(ii).

5. Income Reconciliation Factor (IRF)

For persons enrolled in a QHP through a Marketplace who receive an advance payment of the premium tax credit (APTC), there will be an annual reconciliation following the end of the year to compare the advance payments to the correct amount of PTC based on household circumstances shown on the federal income tax return. Any difference between the latter amounts and the advance payments made during the year would either be paid to the taxpayer (if too little APTC was paid) or charged to the taxpayer as additional tax (if too much APTC was made, subject to any limitations in statute or regulation), as provided in 26 U.S.C. 36B(f).

Section 1331(e)(2) of the Affordable Care Act specifies that an individual eligible for BHP may not be treated as a qualified individual under section 1312 eligible for enrollment in a QHP offered through a Marketplace. We are defining "eligible" to mean anyone for whom the state agency or the Exchange assesses or determines, based on the single streamlined application or renewal form, as eligible for enrollment in the BHP. Because enrollment in a QHP is a requirement for PTC for the enrolled individual's coverage, individuals determined or assessed as eligible for a BHP are not eligible to receive APTC assistance for coverage in the Marketplace. Because they do not receive APTC assistance, BHP enrollees, on whom the 2016 payment methodology is based, are not subject to the same income reconciliation as Marketplace consumers. Nonetheless, there may still be differences between a BHP enrollee's household income reported at the beginning of the year and

the actual income over the year. These may include small changes (reflecting changes in hourly wage rates, hours worked per week, and other fluctuations in income during the year) and large changes (reflecting significant changes in employment status, hourly wage rates, or substantial fluctuations in income). There may also be changes in household composition. Thus, we believe that using unadjusted income as reported prior to the BHP program year may result in calculations of estimated PTC that are inconsistent with the actual incomes of BHP enrollees during the year. Even if the BHP program adjusts household income determinations and corresponding claims of federal payment amounts based on household reports during the year or data from third-party sources, such adjustments may not fully capture the effects of tax reconciliation that BHP enrollees would have experienced had they been enrolled in a QHP through a Marketplace and received APTC assistance.

Therefore, we are including in Equation 1 an income adjustment factor that would account for the difference between calculating estimated PTC using: (a) Income relative to FPL as determined at initial application and potentially revised mid-year, under 600.320, for purposes of determining BHP eligibility and claiming federal BHP payments; and (b) actual income relative to FPL received during the plan year, as it would be reflected on individual federal income tax returns. This adjustment will prospectively estimate the average effect of income reconciliation aggregated across the BHP population had those BHP enrollees been subject to tax reconciliation after receiving APTC assistance for coverage provided through QHPs. For 2016, we will estimate reconciliation effects based on tax data for 2 years, reflecting income and tax unit composition

changes over time among BHP-eligible individuals.

The OTA maintains a model that combines detailed tax and other data, including Marketplace enrollment and PTC claimed, to project Marketplace premiums, enrollment, and tax credits. For each enrollee, this model compares the APTC based on household income and family size estimated at the point of enrollment with the PTC based on household income and family size reported at the end of the tax year. The former reflects the determination using enrollee information furnished by the applicant and tax data furnished by the IRS. The latter would reflect the PTC eligibility based on information on the tax return, which would have been determined if the individual had not enrolled in BHP. The ratio of the reconciled PTC to the initial estimation of PTC will be used as the income reconciliation factor in Equation (1) for estimating the PTC portion of the BHP payment rate.

For 2016, OTA has estimated that the income reconciliation factor for states that have implemented the Medicaid eligibility expansion to cover adults up to 133 percent of the FPL will be 100.25 percent, and for states that have not implemented the Medicaid eligibility expansion and do not cover adults up to 133 percent of the FPL will be 100.24 percent. For 2015, we used the average of the factors for the two groups of states. For 2016, the values of the factors for the two groups of states are within 0.01 percentage point of each other. Because the values are within 0.01 percentage point, we will use the greater of two factors (100.25 percent) rather than the average.

6. Tobacco Rating Adjustment Factor (TRAF)

As previously described, the reference premium is estimated, for purposes of determining both the PTC and related

federal BHP payments, based on premiums charged for non-tobacco users, including in states that allow premium variations based on tobacco use, as provided in 42 U.S.C. 300gg (a)(1)(A)(iv). In contrast, as described in 45 CFR 156.430, the CSR advance payments are based on the total premium for a policy, including any adjustment for tobacco use. Accordingly, we will incorporate a tobacco rating adjustment factor into Equation 2 that reflects the average percentage increase in health care costs that results from tobacco use among the BHP-eligible population and that would not be reflected in the premium charged to non-users. This factor will also take into account the estimated proportion of tobacco users among BHP-eligible consumers.

To estimate the average effect of tobacco use on health care costs (not reflected in the premium charged to non-users), we will calculate the ratio between premiums that silver level QHPs charge for tobacco users to the premiums they charge for non-tobacco users at selected ages. To calculate estimated proportions of tobacco users, we will use data from the Centers for Disease Control and Prevention (CDC) to estimate tobacco utilization rates by state and relevant population characteristic.<sup>8</sup> For each state, we will calculate the tobacco usage rate based on the percentage of persons by age who use cigarettes and the percentage of persons by age that use smokeless tobacco, and calculate the utilization rate by adding the two rates together. The data is available for 3 age intervals: 18–24; 25–44; and 45–64. For the BHP payment rate cell for persons ages 21–34, we will calculate the factor as  $(4/14 * \text{the utilization rate of 18–24 year olds}) + (10/14 * \text{the utilization rate of 25–44 year olds})$ , which would be the weighted average of tobacco usage for persons 21–34 assuming a uniform distribution of ages; for all other age ranges used for the rate cells, we will use the age range in the CDC data in which the BHP payment rate cell age range is contained.

We will provide tobacco rating factors that may vary by age and by geographic area within each state. To the extent that the second lowest cost silver plans have a different ratio of tobacco user rates to non-tobacco user rates in different geographic areas, the tobacco rating adjustment factor may differ across geographic areas within a state. In

addition, to the extent that the second lowest cost silver plan has a different ratio of tobacco user rates to non-tobacco user rates by age, or that there is a different prevalence of tobacco use by age, the tobacco rating adjustment factor may differ by age.

#### 7. Factor for Removing Administrative Costs (FRAC)

The Factor for Removing Administrative Costs represents the average proportion of the total premium that covers allowed health benefits, and we include this factor in our calculation of estimated CSRs in Equation 2. The product of the reference premium and the Factor for Removing Administrative Costs would approximate the estimated amount of Essential Health Benefit (EHB) claims that would be expected to be paid by the plan. This step is needed because the premium also covers such costs as taxes, fees, and QHP administrative expenses. We are setting this factor equal to 0.80, which is the same percentage for the factor to remove administrative costs for calculating CSR advance payments for established in the 2015 HHS Notice of Benefit and Payment Parameters.

#### 8. Actuarial Value (AV)

The actuarial value is defined as the percentage paid by a health plan of the total allowed costs of benefits, as defined under 45 CFR 156.20. (For example, if the average health care costs for enrollees in a health insurance plan were \$1,000 and that plan has an actuarial value of 70 percent, the plan would be expected to pay on average \$700 ( $\$1,000 \times 0.70$ ) for health care costs per enrollee, on average.) By dividing such estimated costs by the actuarial value in the methodology, we will calculate the estimated amount of total EHB-allowed claims, including both the portion of such claims paid by the plan and the portion paid by the consumer for in-network care. (To continue with that same example, we would divide the plan's expected \$700 payment of the person's EHB-allowed claims by the plan's 70 percent actuarial value to ascertain that the total amount of EHB-allowed claims, including amounts paid by the consumer, is \$1,000.)

For the purposes of calculating the CSR rate in Equation 2, we will use the standard actuarial value of the silver level plans in the individual market, which is equal to 70 percent.

#### 9. Induced Utilization Factor (IUF)

The induced utilization factor will be used as a factor in calculating estimated CSRs in Equation 2 to account for the

increase in health care service utilization associated with a reduction in the level of cost sharing a QHP enrollee would have to pay, based on the cost-sharing reduction subsidies provided to enrollees.

The 2015 HHS Notice of Benefit and Payment Parameters provided induced utilization factors for the purposes of calculating cost-sharing reduction advance payments for 2015. In that rule, the induced utilization factors for silver plan variations ranged from 1.00 to 1.12, depending on income. Using those utilization factors, the induced utilization factor for all persons who would qualify for BHP based on their household income as a percentage of FPL is 1.12; this would include persons with household income between 100 percent and 200 percent of FPL, lawfully present non-citizens below 100 percent of FPL who are ineligible for Medicaid because of immigration status, and persons with household income under 300 percent of FPL, not subject to any cost-sharing. Thus, consistent with last year, we will set the induced utilization factor equal to 1.12 for the BHP payment methodology.

#### 10. Change in Actuarial Value ( $\Delta AV$ )

The increase in actuarial value would account for the impact of the cost-sharing reduction subsidies on the relative amount of EHB claims that would be covered for or paid by eligible persons, and we include it as a factor in calculating estimated CSRs in Equation 2.

The actuarial values of QHPs for persons eligible for cost-sharing reduction subsidies are defined in 45 CFR 156.420(a), and eligibility for such subsidies is defined in 45 CFR 155.305(g)(2)(i) through (iii). For QHP enrollees with household incomes between 100 percent and 150 percent of FPL, and those below 100 percent of FPL who are ineligible for Medicaid because of their immigration status, CSRs increase the actuarial value of a QHP silver plan from 70 percent to 94 percent. For QHP enrollees with household incomes between 150 percent and 200 percent of FPL, CSRs increase the actuarial value of a QHP silver plan from 70 percent to 87 percent.

We will apply this factor by subtracting the standard AV from the higher AV allowed by the applicable cost-sharing reduction. For BHP enrollees with household incomes at or below 150 percent of FPL, this factor will be 0.24 (94 percent minus 70 percent); for BHP enrollees with household incomes more than 150 percent but not more than 200 percent

<sup>8</sup> Centers for Disease Control and Prevention, *Tobacco Control State Highlights 2012*: [http://www.cdc.gov/tobacco/data\\_statistics/state\\_data/state\\_highlights/2012/index.htm](http://www.cdc.gov/tobacco/data_statistics/state_data/state_highlights/2012/index.htm).

of FPL, this factor will be 0.17 (87 percent minus 70 percent).

#### *E. Adjustments for American Indians and Alaska Natives*

There are several exceptions made for American Indians and Alaska Natives enrolled in QHPs through a Marketplace to calculate the PTC and CSRs. Thus, we will make adjustments to the payment methodology described above to be consistent with the Marketplace rules.

We will make the following adjustments:

1. The adjusted reference premium for use in the CSR portion of the rate will be the lowest cost bronze plan instead of the second lowest cost silver plan, with the same adjustment for the population health factor (and in the case of a state that elects to use the 2015 premiums as the basis of the federal BHP payment, the same adjustment for the premium trend factor). American Indians and Alaska Natives are eligible for CSRs with any metal level plan, and thus we believe that eligible persons would be more likely to select a bronze level plan instead of a silver level plan. (It is important to note that the assumption that American Indians and Alaska Natives would enroll in a bronze plan would not necessarily change the PTC, as the PTC amount calculated as part of the BHP payment methodology is the maximum possible PTC payment, which is always based on the applicable second lowest cost silver plan. In actuality, the PTC payment that would be made in for an individual enrolled in a QHP cannot exceed the total premium. It is possible that some bronze plan premiums would be less than the maximum PTC payment, but we have not made any adjustment in the methodology for this. We believe that this assumption would have a negligible impact on the BHP payment.)

2. The actuarial value for use in the CSR portion of the rate will be 0.60 instead of 0.70, which is consistent with the actuarial value of a bronze level plan.

3. The induced utilization factor for use in the CSR portion of the rate will be 1.15, which is consistent with the 2015 HHS Notice of Benefit and Payment Parameters induced utilization factor for calculating advance CSR payments for persons enrolled in bronze level plans and eligible for CSRs up to 100 percent of actuarial value.

4. The change in the actuarial value for use in the CSR portion of the rate will be 0.40. This reflects the increase from 60 percent actuarial value of the bronze plan to 100 percent actuarial value, as American Indians and Alaska

Natives are eligible to receive CSRs up to 100 percent of actuarial value.

#### *F. State Option To Use 2015 QHP Premiums for BHP Payments*

In the interest of allowing states greater certainty in the total BHP federal payments for 2016, we will provide states the option to have their final 2016 federal BHP payment rates calculated using the projected 2016 adjusted reference premium (that is, using 2015 premium data multiplied by the premium trend factor defined below), as described in Equation (3b).

For a state that elects to use the 2015 premium as the basis for the 2016 BHP federal payment, the state must inform CMS no later than May 15, 2015.

For Equation (3b), we define the premium trend factor as follows:

*Premium Trend Factor (PTF):* In Equation (3b), we calculate an adjusted reference premium (ARP) based on the application of certain relevant variables to the RP, including a PTF. In the case of a state that would elect to use the 2015 premiums as the basis for determining the BHP payment, it would be appropriate to apply a factor that would account for the change in health care costs between the year of the premium data and the BHP plan year. We define this as the premium trend factor in the BHP payment methodology. This factor will approximate the change in health care costs per enrollee, which would include, but not be limited to, changes in the price of health care services and changes in the utilization of health care services. This provides an estimate of the adjusted monthly premium for the applicable second lowest cost silver plan that would be more accurate and reflective of health care costs in the BHP program year, which will be the year following issuance of the final federal payment notice. In addition, we believe that it would be appropriate to adjust the trend factor for the estimated impact of changes to the transitional reinsurance program on the average QHP premium.

We will use the annual growth rate in private health insurance expenditures per enrollee from the National Health Expenditure projections, developed by CMS' Office of the Actuary (<http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected.html>, Table 17—Health Insurance Enrollment and Enrollment Growth Rates). For 2016, the projected increase in private health insurance premiums per enrollee is 3.9 percent.

The adjustment for changes in the transitional reinsurance program is developed from analysis by CMS' Center for Consumer Information and Insurance Oversight (CCIIO). In unpublished analysis, CCIIO estimated that the transitional reinsurance program would reduce QHP premiums in 2015 on average by 7.9 percent and in 2016 by 4.4 percent, as the amount of funding in the reinsurance program decreases. Based on these analyses, we estimate that the changes in the transitional reinsurance program would lead to an increase of 3.8 percent in average QHP premiums between 2015 and 2016:  $(1 - 0.044)/(1 - 0.079) - 1 = 3.8$  percent.

Combining these two factors together, we calculate that the premium trend factor for 2016 would be 7.8 percent  $(1 + 0.039) \times (1 + 0.038) - 1 = 7.8$  percent.

States may want to consider that the increase in premiums for QHPs from 2015 to 2016 may differ from the premium trend factor developed for the BHP funding methodology for several reasons. In particular, states may want to consider that the second lowest cost silver plan for 2015 may not be the same as the second lowest cost silver plan in 2016. This may lead to the premium trend factor being greater than or less than the actual change in the premium of the second lowest cost silver plan in 2015 compared to the premium of the second lowest cost silver plan in 2016.

#### *G. State Option To Include Retrospective State-Specific Health Risk Adjustment in Certified Methodology*

To determine whether the potential difference in health status between BHP enrollees and consumers in the Marketplace would affect the PTC, CSRs, risk adjustment and reinsurance payments that would have otherwise been made had BHP enrollees been enrolled in coverage on the Marketplace, we will provide states implementing the BHP the option to propose and to implement, as part of the certified methodology, a retrospective adjustment to the federal BHP payments to reflect the actual value that would be assigned to the population health factor (or risk adjustment) based on data accumulated during program year 2016 for each rate cell.

We acknowledge that there is uncertainty with respect to this factor due to the lack of experience of QHPs on the Marketplace and other payments related to the Marketplace, which is why, absent a state election, we will use a value for the population health factor to determine a prospective payment rate which assumes no difference in the health status of BHP enrollees and QHP



enrollees. There is considerable uncertainty regarding whether the BHP enrollees will pose a greater risk or a lesser risk compared to the QHP enrollees, how to best measure such risk, and the potential effect such risk would have had on PTC, CSRs, risk adjustment and reinsurance payments that would have otherwise been made had BHP enrollees been enrolled in coverage on the Marketplace. To the extent, however, that a state would develop an approved protocol to collect data and effectively measure the relative risk and the effect on federal payments, we will permit a retrospective adjustment that would measure the actual difference in risk between the two populations to be incorporated into the certified BHP payment methodology and used to adjust payments in the previous year.

For a state electing the option to implement a retrospective population health status adjustment, we require that the state submit a proposed protocol to CMS, which will be subject to approval by CMS and would be required to be certified by CMS' Chief Actuary, in consultation with the OTA, as part of the BHP payment methodology. We described the protocol for the population health status adjustment in guidance in *Considerations for Health Risk Adjustment in the Basic Health Program in Program Year 2015* (<http://www.medicaid.gov/Basic-Health-Program/Downloads/Risk-Adjustment-and-BHP-White-Paper.pdf>). We require a state to submit its proposed protocol by August 1, 2015 for CMS approval. This submission must include descriptions of how the state would collect the necessary data to determine the adjustment, including any contracting contingencies that may be in place with participating standard health plan issuers. We will provide technical assistance to states as they develop their protocols. In order to implement the population health status, we must approve the state's protocol no later than December 31, 2015. Finally, the state will be required to complete the population health status adjustment at the end of 2016 based on the approved protocol. After the end of the 2016 program year, and once data is made available, we will review the state's findings, consistent with the approved protocol, and make any necessary adjustments to the state's federal BHP payment amount. If we determine that the federal BHP payments were less than they would have been using the final adjustment factor, we would apply the difference to the state's quarterly

BHP trust fund deposit. If we determine that the federal BHP payments were more than they would have been using the final reconciled factor, we would subtract the difference from the next quarterly BHP payment to the state.

#### IV. Collection of Information Requirements

The 2016 funding methodology is unchanged from the 2015 final methodology that published on March 12, 2014 (79 FR 13887). The 2016 methodology does not impose any new or revised reporting, recordkeeping, or third-party disclosure requirements, and therefore, does not require additional OMB review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The methodology's information collection requirements and burden estimates are approved by OMB under control number 0938-1218 (CMS-10510).

Consistent with the Basic Health Program's proposed and final rules (September 25, 2013 at 78 FR 59122 and March 12, 2014 at 79 FR 14112, respectively) we continue to estimate less than 10 annual respondents for completing the Blueprint. Consequently, the Blueprint is exempt from formal OMB review and approval under 5 CFR 1320.3(c).

Finally, this action does not impose any additional reporting, recordkeeping, or third-party disclosure requirements on qualified health plans or on states operating State Based Marketplaces.

#### V. Regulatory Impact Statement

##### A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995) (UMRA), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a "significant regulatory

action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). As noted in the BHP final rule, BHP provides states the flexibility to establish an alternative coverage program for low-income individuals who would otherwise be eligible to purchase coverage through the Marketplace. We are uncertain as to whether the effects of the final rulemaking, and subsequently, this methodology, will be "economically significant" as measured by the \$100 million threshold, and hence not a major rule under the Congressional Review Act. The impact may depend on several factors, including the number of and which particular states choose to implement or continue BHP in 2016, the level of QHP premiums in 2015 and 2016, the number of enrollees in BHP, and the other coverage options for persons who would be eligible for BHP. In particular, while we generally expect that many enrollees would have otherwise been enrolled in a QHP through the Marketplace, some persons may have been eligible for Medicaid under a waiver or a state health coverage program. For those who would have enrolled in a QHP and thus would have received PTCs or CSRs, the federal expenditures for BHP would be expected to be more than offset by a reduction in federal expenditures for PTCs and CSRs. For those who would have been enrolled in Medicaid, there would likely be a smaller offset in federal expenditures (to account for the federal share of Medicaid expenditures), and for those who would have been covered in non-federal programs or would have been uninsured, there likely would be an increase in federal

expenditures. In accordance with the provisions of Executive Order 12866, this methodology was reviewed by the Office of Management and Budget.

#### 1. Need for the Methodology

Section 1331 of the Affordable Care Act (codified at 42 U.S.C. 18051) requires the Secretary to establish a BHP, and section (d)(1) specifically provides that if the Secretary finds that a state “meets the requirements of the program established under section (a) [of section 1331 of the Affordable Care Act], the Secretary shall transfer to the State” federal BHP payments described in section (d)(3). This methodology provides for the funding methodology to determine the federal BHP payment amounts required to implement these provisions in program year 2016.

#### 2. Alternative Approaches

Many of the factors in this methodology are specified in statute; therefore, we are limited in the alternative approaches we could consider. One area in which we had a choice was in selecting the data sources used to determine the factors included in the methodology. Except for state-specific reference premiums and enrollment data, we are using national rather than state-specific data. This is due to the lack of currently available state-specific data needed to develop the majority of the factors included in the methodology. We believe the national data will produce sufficiently accurate determinations of payment rates. In addition, we believe that this approach will be less burdensome on states. To reference premiums and enrollment data, we are using state-specific data rather than national data as we believe state-specific data will produce more accurate determinations than national averages.

In addition, we considered whether or not to provide states the option to develop a protocol for a retrospective adjustment to the population health factor in 2016 as we did in the 2015 payment methodology. We believe that providing this option again in 2016 is appropriate and likely to improve the accuracy of the final payments.

We also considered whether or not to require the use of 2015 or 2016 QHP premiums to develop the 2016 federal BHP payment rates. We believe that the payment rates can still be developed accurately using either the 2015 or 2016 QHP premiums and that it is appropriate to provide the states the option, given the interests and specific considerations each state may have in operating the BHP.

#### 3. Transfers

The provisions of this methodology are designed to determine the amount of funds that will be transferred to states offering coverage through a BHP rather than to individuals eligible for premium and cost-sharing reductions for coverage purchased on the Marketplace. We are uncertain what the total federal BHP payment amounts to states will be as these amounts will vary from state to state due to the varying nature of state composition. For example, total federal BHP payment amounts may be greater in more populous states simply by virtue of the fact that they have a larger BHP-eligible population and total payment amounts are based on actual enrollment. Alternatively, total federal BHP payment amounts may be lower in states with a younger BHP-eligible population as the reference premium used to calculate the federal BHP payment will be lower relative to older BHP enrollees. While state composition will cause total federal BHP payment amounts to vary from state to state, we believe that the methodology accounts for these variations to ensure accurate BHP payment transfers are made to each state.

#### B. *Unfunded Mandates Reform Act*

Section 202 of the UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation, by state, local, or tribal governments, in the aggregate, or by the private sector. In 2014, that threshold is approximately \$141 million. States have the option, but are not required, to establish a BHP. Further, the methodology would establish federal payment rates without requiring states to provide the Secretary with any data not already required by other provisions of the Affordable Care Act or its implementing regulations. Thus, this payment methodology does not mandate expenditures by state governments, local governments, or tribal governments.

#### C. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The Act generally defines a “small entity” as (1) a proprietary firm meeting the size standards of the Small Business

Administration (SBA); (2) a not-for-profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. Individuals and states are not included in the definition of a small entity. Few of the entities that meet the definition of a small entity as that term is used in the RFA would be impacted directly by this methodology.

Because this methodology is focused on the funding methodology that will be used to determine federal BHP payment rates, it does not contain provisions that would have a significant direct impact on hospitals, and other health care providers that are designated as small entities under the RFA. We cannot determine whether this methodology would have a significant economic impact on a substantial number of small entities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a may have a significant economic impact on the operations of a substantial number of small rural hospitals. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. As indicated in the preceding discussion, there may be indirect positive effects from reductions in uncompensated care. Again, we cannot determine whether this methodology would have a significant economic impact on a substantial number of small rural hospitals, and we request public comment on this issue.

#### D. *Federalism*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct effects on states, preempts state law, or otherwise has federalism implications. The BHP is entirely optional for states, and if implemented in a state, provides access to a pool of funding that would not otherwise be available to the state.

Dated: February 4, 2015.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: February 13, 2015.

**Sylvia M. Burwell,**

*Secretary, Department of Health and Human Services.*

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**OFFICE OF PERSONNEL  
MANAGEMENT****45 CFR Part 800**

RIN 3206-AN12

**Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges****AGENCY:** Office of Personnel Management.**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing a final rule implementing modifications to the Multi-State Plan (MSP) Program based on the experience of the Program to date. OPM established the MSP Program pursuant to the Affordable Care Act. This rule clarifies the approach used to enforce the applicable standards of the Affordable Care Act with respect to health insurance issuers that contract with OPM to offer MSP options; amends MSP standards related to coverage area, benefits, and certain contracting provisions under section 1334 of the Affordable Care Act; and makes non-substantive technical changes.

**DATES:** Effective March 26, 2015.**FOR FURTHER INFORMATION CONTACT:**Cameron Stokes by telephone at (202) 606-2128, by FAX at (202) 606-4430, or by email at [mssp@opm.gov](mailto:mssp@opm.gov).

**SUPPLEMENTARY INFORMATION:** The Patient Protection and Affordable Care Act (Pub. L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), together known as the Affordable Care Act, provides for the establishment of Affordable Insurance Exchanges, or “Exchanges” (also called Health Insurance Marketplaces, or “Marketplaces”), where individuals and small businesses can purchase qualified coverage. The Exchanges provide competitive marketplaces for individuals and small employers to compare available private health insurance options based on price, quality, and other factors. The Exchanges enhance competition in the health insurance market, improve choice of affordable health insurance, and give individuals and small businesses purchasing power comparable to that of large businesses. The Multi-State Plan (MSP) Program was created pursuant to section 1334 of the Affordable Care Act to increase competition by offering high-quality health insurance coverage sold in multiple States on the Exchanges. The U.S. Office of Personnel Management

(OPM) is issuing this final rule to modify the standards set forth for the MSP Program under 45 CFR Part 800 that was published as a final rule on March 11, 2013 (78 FR 15560). This rule clarifies OPM’s intent in administering the Program, as well as makes regulatory changes in order to expand issuer participation and offerings in the Program to meet the goal of increasing competition.

**Abbreviations**

EHB—Essential Health Benefits  
FEHB Program—Federal Employees Health Benefits Program  
HHS—U.S. Department of Health and Human Services  
MSP—Multi-State Plan  
NAIC—National Association of Insurance Commissioners  
OPM—U.S. Office of Personnel Management  
PHS Act—Public Health Service Act  
QHP—Qualified Health Plan  
SHOP—Small Business Health Options Program

Section 1334 of the Affordable Care Act created the Multi-State Plan (MSP) Program to foster competition in the health insurance markets on the Exchanges (also called Health Insurance Exchanges or Marketplaces) based on price, quality, and benefit delivery. The Affordable Care Act directs the U.S. Office of Personnel Management (OPM) to contract with private health insurance issuers to offer at least two MSP options on each of the Exchanges in the States and the District of Columbia.<sup>1</sup> The law allows MSP issuers to phase in coverage.<sup>2</sup>

In the 2014 plan year, OPM contracted with one group of issuers to offer more than 150 MSP options in 31 States, including the District of Columbia. Approximately 371,000 individuals enrolled in an MSP option in 2014. For plan year 2015, OPM entered into contract with a second group of issuers, and MSP coverage expanded to 36 States. The Program currently offers more than 200 MSP options through the Exchanges to further competition and expand choices available to individuals, families, and small businesses.

This rule builds on the MSP Program final rule published March 11, 2013.<sup>3</sup>

<sup>1</sup> Multi-State Plan option or MSP option means a discrete pairing of a package of benefits with particular cost sharing (which does not include premium rates or premium rate quotes) that is offered under a contract with OPM.

<sup>2</sup> Multi-State Plan issuer or MSP issuer means a health insurance issuer or group of issuers that has a contract with OPM to offer MSP options pursuant to section 1334 of the Affordable Care Act.

<sup>3</sup> Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges, 78 FR 15560 (Mar. 11, 2013).

Changes to the regulations include clarifications to the process by which OPM administers the MSP Program, pursuant to section 1334 of the Affordable Care Act, and revisions to the standards and requirements applicable to MSP options and MSP issuers.

**Summary of Comments**

OPM published a proposed rule on November 24, 2014 (79 FR 69802), to modify standards related to the implementation of the MSP Program at part 800 of title 45, Code of Federal Regulations. The comment period for the proposed rule closed December 24, 2014. OPM received 43 comments from a broad range of stakeholders, including States, health insurance issuers, health care provider associations, pharmaceutical companies, and consumer groups.

While most of the comments were related to the proposed modifications addressed in the rule, a small number of the comments were on areas of the regulations for which we did not propose changes or request comment.

A summary of the comments we received follows, along with our responses and changes to the proposed regulations in light of the comments. In addition, we are making some minor technical and editorial changes to the proposed regulations to correct errors and improve clarity and readability. Comments submitted on sections of the regulations that we did not propose to change are outside the scope of this rulemaking and are not addressed here.

**Length of the Comment Period**

*Comments:* Some commenters contended that the 30-day comment period did not provide sufficient time to provide feedback.

*Response:* OPM values the participation of a broad array of diverse stakeholders. In addition to the proposed rule, we continue to seek input and guidance from numerous stakeholders, including the National Association of Insurance Commissioners (NAIC), States, tribal governments, consumer advocates, health insurance issuers, labor organizations, health care provider associations, and trade groups.

**Responses to Comments on the Proposed Regulations***Subpart A—General Provisions and Definitions***Definitions (§ 800.20)**

We sought comments on two proposed definitions for the MSP Program. Specifically, we proposed to add the definition for “Multi-State Plan

option,” which may also be referred to as “MSP option.” We also proposed to remove the definition of “Multi-State Plan” because the term “Multi-State Plan option” is more precise and avoids the confusion of the varying definitions of the word “plan” in the context of health insurance. We also proposed to add a definition for “State-level issuer” as a health insurance issuer designated by the MSP issuer to offer an MSP option or MSP options. OPM invited comments on the proposed changes to the definitions under 45 CFR 800.20 as well as any comments on the current definition for “group of issuers.” OPM received no comments on the definition of “State-level issuer,” and we will adopt the definition as proposed.

*Comments:* OPM received comments that were generally supportive of adding the proposed definition of “MSP option.” One of these commenters asked that we replace “package of benefits” with the term “product” as it is defined in 45 CFR 144.103. We did not receive comments on removing the definition “Multi-State Plan.”

*Response:* OPM will finalize the definition of “MSP option” as proposed and will remove “Multi-State Plan.” The definition of “MSP option” will ensure consistency within the MSP Program and avoid confusion with definitions from programs outside of OPM.

*Comments:* Commenters responded to our call for feedback on the definition of “Group of Issuers” in § 800.20. The commenters were generally opposed to expanding “Group of Issuers” to include alternative structures and requested further clarification from OPM. Some commenters were supportive of interpreting the definition of “Group of Issuers” to attract additional issuers to the MSP Program.

*Response:* OPM did not propose any changes to the “group of issuers” definition, and we appreciate the comments received. It was OPM’s intention in the proposed rule to clarify that a group of issuers may come together in the MSP Program either by common control and ownership or by using a nationally licensed service mark. OPM recognizes there are a number of ways to organize using a nationally licensed service mark, and looks forward to working with current and potential MSP issuers who decide to come together under either one of these two options in the MSP Program.

#### *Subpart B—Multi-State Plan Issuer Requirements*

##### *Phased Expansion, etc. (§ 800.104)*

Section 1334(e) of the Affordable Care Act provides for OPM to allow issuers to phase in their participation in the MSP Program. Under § 800.104(a), OPM requested comment on how we may expand participation in the Program to meet the goal of increasing competition while balancing consumers’ needs. Specifically, we asked for comment on the timeframes and other appropriate parameters within which an MSP issuer could reasonably expand participation in the Program. We did not propose any changes to the regulatory text for § 800.104(a). In clarifying the status of the Program and how we are implementing the standards set under § 800.104, we proposed to delete the standard for an MSP issuer to submit a plan to become statewide in § 800.104(b), and add a requirement that the MSP issuer service area for MSP coverage shall be greater than or equal to any service area proposed by the issuer for QHP coverage. Under § 800.104(c), we solicited comment on when MSP issuers should be required to participate on a Small Business Health Options Program (SHOP). Based on the comments received, the changes to § 800.104(b) will be accepted as proposed.

*Comments:* Some commenters commended OPM for clarifying § 800.104(a) of the rule and promoting increased flexibility on standards for coverage areas and geographic requirements, as it will attract issuers to the Program and promote competition. Other commenters urged OPM to encourage new and existing MSP issuers to offer plans that are national in scope and coverage.

*Response:* Through our continued engagement with current and potential MSP issuers, OPM has heard significant concerns about the challenges of rapidly expanding MSP coverage both within and across State lines. OPM agrees that increased flexibility around the schedule to expand to each Exchange in every State will help the MSP Program meet its goal of increasing competition while balancing consumers’ needs for coverage. OPM intends to ensure that MSP coverage is available as expansively and as soon as practicable. We work closely with current and potential MSP issuers to address any operational challenges they may face in order to expand MSP coverage nationally or establish reciprocity.

*Comments:* Some commenters expressed that any potential MSP issuers should be held to the same

standards as an MSP issuer who participated in the Program during the first year of operations. These commenters requested OPM set minimum threshold standards for participation, such as timeframes for expanding coverage and minimum standards for coverage areas.

*Response:* Since the first year of operations for the MSP Program, OPM consistently has applied the same standards to all current and potential MSP issuers, and we will continue to do so going forward. We are not making any changes to the text at this time.

*Comment:* Commenters disagreed with OPM’s interpretation of 1334(b) and (e) stating that neither of the MSP issuers currently under contract with OPM meets the statutory requirements to participate in the Program.

*Response:* We respectfully disagree with the commenter. Section 1334 sets forth standards to guide the exercise of OPM’s contracting authority, noting that section 1334(b)(1) contemplates offering coverage in every State and the District of Columbia, and outlines a framework within which participation in the MSP Program is a feasible and attractive business activity. Such standards include the provisions under subsections (b) and (e) on offering coverage in every State.

*Comments:* Many commenters supported OPM’s proposal to delete the standard for an MSP issuer to submit a plan to become statewide and instead negotiate directly with MSP issuers to expand coverage based on business factors and consumers’ needs. Commenters suggested that requiring a specific plan to become statewide may discourage participation in the Program, and flexibility on meeting geographic coverage standards would encourage competition. These commenters also commended OPM on efforts to evaluate MSP issuers’ proposed service areas to ensure they are established without discrimination. Other commenters opposed the proposal and sought additional standards.

*Response:* OPM is committed to statewide coverage, but is sensitive to requirements that may discourage participation in the Program or does not serve the goal of promoting competition on the Exchanges. OPM will assess consumers’ needs for coverage, including ensuring that MSP issuers’ proposed service areas have been established without regard to racial, ethnic, language, or health status-related factors listed in section 2705(a) of the PHS Act, or other factors that exclude specific high-utilizing, high-cost, or medically underserved populations.

*Comments:* Commenters opposed the proposed change to the regulatory text to delete a plan for reaching statewide MSP coverage, stating that OPM should establish minimum thresholds for expected MSP coverage areas within a State. The commenter suggested OPM set a standard to require coverage as broadly as the area in which the issuer is licensed to sell coverage in a State, equal to any coverage offered as a Qualified Health Plan (QHP), or alternatively, a percent of population or geographic area. Similarly, other commenters recommended OPM require coverage of 75% of the State's counties or other geographic area.

*Response:* OPM is committed to a goal of statewide coverage in the MSP Program, and intends to continue working with current and potential MSP issuers to develop productive and ambitious approaches to achieving statewide coverage. OPM believes that our standard for an MSP issuer who offers both MSP options and QHPs to provide an MSP service area that is equal to or greater than the issuer's QHP service area is adequate and reasonable to ensure broad MSP coverage. We appreciate the specific examples of other minimum MSP standards for coverage areas. At this time, we will finalize § 800.104(b) as proposed maintaining the standard of an MSP coverage area to be equal to or greater than the coverage area proposed by the same issuer for their QHP service area.

Some commenters recommended OPM continue to implement SHOP participation standards consistent with standards set by U.S. Department of Health and Human Services (HHS) for a Federally-facilitated SHOP or, where applicable, standards set by State-based Exchanges for SHOP participation requirements that apply to QHP issuers. Other comments suggested that the MSP Program is not mature enough to require MSP issuers to participate in a SHOP at this time.

*Response:* In light of these comments, OPM intends to continue its flexibility in SHOP participation for MSP issuers in § 800.104(c). MSP issuers must meet the same standards for SHOP participation set for QHP issuers, including the requirements of 45 CFR 156.200(g) and any standards for issuers participating on a State-based SHOP. An MSP issuer may meet the requirements of 45 CFR 156.200(g)(3) if a State-level issuer or any other issuer in the same issuer group affiliated with an MSP issuer provides coverage on a Federally-facilitated SHOP. We discussed this

policy in-depth in the March 2013 final rule.<sup>4</sup>

#### Benefits (§ 800.105)

In § 800.105(b), OPM proposed a change that would allow an MSP issuer to make essential health benefits (EHB)-benchmark selections on a State-by-State basis. The issuer would also be able to offer two or more MSP options in each State. For example, one option could use the State-selected EHB-benchmark, and one could use the OPM-selected EHB-benchmark. OPM proposed this change to allow for more flexibility to attract issuers to the MSP Program with the expectation of expanding competition on the Exchanges. This flexibility could facilitate coalition building across issuers in different States, so that issuers can work together toward MSP options that meet the MSP Program standards.

In § 800.105(c)(3), OPM proposed to clarify the policy on formularies with an OPM-selected EHB-benchmark plan. Under the proposed rule, OPM would allow the MSP issuer to manage formularies around the needs of actual or anticipated enrollees. As part of this proposal, OPM pointed to the current practice in the Federal Employees Health Benefits (FEHB) Program of negotiating formularies and also considered the option of substituting the formulary from the State-selected EHB-benchmark plan. OPM noted that, even with this change, OPM would still ensure compliance with any HHS standards related to drug formularies for QHPs and assurance that the formularies are not discriminatory. OPM also noted that this would allow MSP issuers to propose plans built around the needs of enrollees, subject to approval by OPM.

In the renumbered § 800.105(c)(4), OPM proposed a change to apply a Federal definition of habilitative services and devices, should HHS choose to define the term. In response to comments, in this final rule OPM will revert back to the term we used in our final rule published March 2013, "habilitative services and devices," to ensure consistency with the recently published HHS Notice of Benefit and Payment Parameters for 2016.<sup>5</sup>

In § 800.105(d), OPM did not propose any change to the regulation. However, the preamble noted that OPM also plans to review an MSP issuer's package of benefits for discriminatory benefit design and intends to work closely with States and HHS to identify and

investigate any potentially discriminatory or otherwise noncompliant benefit designs in MSP options.

In § 800.105(e), OPM proposed to change "assume" to "defray" to align with the language in section 1334(c)(2) of the Affordable Care Act.

*Comments:* We received comments on the proposed changes to § 800.105(b), which describes the EHB-benchmark policy, from a broad range of stakeholders. Some comments opposing the change cited consumer confusion while others raised concerns about an unlevel playing field between MSP issuers and QHP issuers or administrative efficiency. In contrast, other commenters supported the proposed changes, and highlighted the opportunity to increase competition in the MSP Program as well as additional choices for consumers. Commenters also highlighted that the change would allow issuers the flexibility needed to fulfill the goals of the Affordable Care Act.

*Response:* While we understand the concerns about adverse selection and consumer confusion, we have not seen nor are we aware of any compelling evidence that multiple EHB-benchmarks would cause these issues.

With the opportunity to use substitutions as well as expand benefits beyond the EHB-benchmark or EHB categories, there is already variation among plans available to consumers.

Additionally, under the framework that applied in the first two years of the Program, we were already reviewing MSP options using each State's EHB-benchmark. Even if the OPM-selected EHB-benchmark plan was not used in every State, there may be some administrative efficiency gained in the overlap.

We note that these changes only allow an MSP issuer to propose these types of packages. OPM still retains the authority to approve the package of benefits in § 800.105(d). OPM will scrutinize all proposals for evidence of discriminatory benefit designs and other issues of noncompliance. Keeping potential issues in mind, we are finalizing the changes as proposed in order to increase opportunities for competition in the MSP Program and create the potential for more choices for consumers.

*Comments:* We also received comments that focused on the need to maintain benefit standards and protections under any approach. These comments highlighted potential issues or vulnerabilities in need of consumer protection and identified key strategies for addressing them.

*Response:* We appreciate the feedback provided by these stakeholders and will

<sup>4</sup> March 11, 2013 *Federal Register* (78 FR 15560, 15565).

<sup>5</sup> 45 CFR 156.115(a)(5).

take this information under consideration as it relates to our review process. We are not making any further changes to § 800.105(b), but may use the comments to inform MSP Program operations or in drafting Program guidance in the future.

*Comments:* We received comments on the proposed changes to § 800.105(c)(3) to the formulary requirements with an OPM-selected EHB-benchmark plan from a variety of stakeholders. Commenters were generally supportive, interpreting the changes as OPM prioritizing the review of formularies proposed by MSP issuers.

Other commenters raised concerns about consumer confusion and potential misalignment of medical and drug benefits

*Response:* We appreciate the broad support from commenters on our proposal as well as their acknowledgement that OPM is prioritizing formulary review. While we understand concerns about the changes to the formulary requirements, including negotiating a formulary or using the formulary from the State-selected EHB-benchmark plan, we do not have any compelling evidence that this would cause consumer confusion or gaps in coverage between medical and drug benefits. OPM intends to use any tools, including the USP category and class count framework, created by HHS to analyze the formulary and inform our negotiations or evaluation of the formulary from the State-selected EHB-benchmark plan. Additionally, we intend to use our discretion in approval of a package of benefits and during any negotiations to identify and remedy gaps between medical and drug benefits. We appreciate the concerns that were raised, but believe we can use the review process to mitigate them, offering more flexibility and consumer choice.

*Comments:* Commenters asked to ensure that proposed formularies meet the requirements of section 2713 of the PHS Act and are compliant with other applicable standards. Other commenters that was supportive of the change asked for a similar change to be applied to State-selected EHB-benchmark plans.

*Response:* OPM has already identified in § 800.102 the requirement to comply with part A of title XXVII of the PHS Act and has also identified in § 800.105(d) that OPM approval of a proposed package of benefits, including the formulary, will include a review against standards set by HHS and OPM. For example, this would include the USP category and class count framework and the use of a pharmacy and therapeutics committee for

formulary development as it applies to QHP issuers. Based on the comments we received and our analysis, we are finalizing § 800.105(c)(3) with no changes.

*Comments:* We received comments on the proposed changes to apply a Federal definition of habilitative services from a variety of stakeholders. Some commenters supported the change. Others recommended OPM modify and expand the definition proposed by HHS and requested OPM address habilitative devices or make provisions for specific types of services or devices. Commenters also asked for illustrative lists of habilitative services. Finally, the comments requested that the Federal definition be treated as a Federal floor.

*Response:* OPM is deferring to HHS on the substance and role of the Federal definition. In keeping with the HHS Notice of Benefit and Payment Parameters for 2016, we are now using the term “habilitative services and devices” in order to remain consistent and address the concerns raised by several commenters. We defer to HHS in determining the standards applicable under its definition of habilitative services and devices. It is not OPM’s intention to allow the MSP issuer to choose between State and Federal definitions if both exist for a given State. In the finalized version of § 800.105(c)(4), OPM is taking the opportunity to add clarity to the paragraph in explaining when a State definition of habilitative services and devices applies and when a Federal definition applies. In the final § 800.105(c)(4), the Federal definition is set as the floor, consistent with the HHS Notice of Benefit and Payment Parameters for 2016. The State retains the flexibility to apply standards or a definition that does not conflict with the Federal definition. Finally, we continue to reserve authority for OPM to define habilitative services and devices for an OPM-selected EHB-benchmark plan absent a State or Federal definition.

*Comments:* We received comments on the issue of non-discrimination and OPM’s review of MSP options as it relates to § 800.105(d). Commenters generally supported the proposal and asked for OPM to identify examples of discriminatory benefit designs, and one asked OPM to set specific standards for review in the regulation.

*Response:* OPM identified the requirement to comply with Federal law in § 800.102 and also identified related HHS standards against which MSP issuers and MSP options will be evaluated in § 800.105(d). At this time, we believe we have the authority necessary to apply and modify

standards for non-discrimination, updating and adapting our review as we continue to learn about discriminatory benefit designs. In practice, we will align our review for non-discriminatory benefit designs with HHS.

We did not receive any comments on the proposed change to § 800.105(e). Therefore, we are adopting the proposed § 800.105(e) as final.

In § 800.105(c)(1), we are removing the reference to (c)(4) and replacing it with a reference to (c)(5) in § 800.105(c)(1) to correct an internal cross reference.

#### Assessments and User Fees (§ 800.108)

OPM has authority to collect MSP Program user fees, and continues to preserve its discretion to collect an MSP Program user fee. In the proposed rule, we clarified that OPM may begin collecting the fee as early as plan year 2015. OPM intends to use the MSP assessment or user fee to fund OPM’s functions for administration of the Program, including but not limited to entering into contracts with, certifying, recertifying, decertifying, overseeing MSP options and MSP issuers for that plan year, and audits and investigations performed by OPM’s Office of Inspector General related to the MSP Program. In the Federally-facilitated Exchanges, OPM is coordinating with HHS regarding the collection of user fees, so that issuers would not be affected operationally. We proposed to revise the regulatory text to allow for flexibility in the process for collecting MSP Program assessments or user fees. We also solicited comments on the process for collecting user fees in the State-based Exchanges and the general use of any fees collected by OPM.

*Comments:* Some commenters were opposed to the imposition of user fees in State-based Exchanges citing operational challenges in collecting fees.

*Response:* We have considered the comments received and agree that operational complexities for collecting any user fee from MSP issuers on State-based Exchanges exist. We will not be collecting or imposing user fees on MSP issuers operating on State-based Exchanges in plan year 2016. Therefore, the changes to § 800.108 will be accepted as proposed.

#### Network Adequacy (§ 800.109)

In § 800.109(b), OPM proposed to codify the requirement that MSP issuers must comply with any additional provider directory standards that may be set by HHS.

*Comments:* Commenters generally supported the proposed change, noting that incorporating HHS standards for

provider directories would improve the quality of information consumers receive. Some commenters suggested OPM defer to State requirements where they exist.

*Response:* It has been OPM's intention that an MSP issuer comply with appropriate Federal, and where applicable, State requirements for provider directories. OPM did not intend for the proposed changes to § 800.109(b) to alter that framework. After further consideration of the proposed change to subsection (b), we decided that the proposed language is unnecessary. We are, therefore, removing the proposed addition to subsection (b) from the regulatory text. Again, we intend for MSP issuers to comply with any additional regulations promulgated by HHS for QHP issuers, and where applicable, State requirements for provider directories.

#### Accreditation (§ 800.111)

In the proposed rule, we proposed to revise the reference to the specific section in the Code of Federal Regulations to 45 CFR 156.275(a)(1) to be more precise. We received no comments on this proposed change, and are finalizing the text as proposed.

#### Level Playing Field (§ 800.115)

In § 800.115, we proposed to revise the regulatory text to clarify that all areas listed under section 1324(b) of the Affordable Care Act are subject to § 800.114. In addition, we made a technical correction to § 800.115(l) to change a reference to 45 CFR part 162 to 45 CFR part 164. We received no comments on these changes and are finalizing as proposed.

#### Subpart D—Application and Contracting Procedures

In subpart D of 45 CFR part 800, OPM set forth procedures for processing and evaluating applications from issuers seeking participation in the MSP Program. Subpart D also establishes processes pertaining to executing contracts to offer MSP coverage. In particular, this subpart includes sections that address an application process, review of applications, MSP Program contracting, term of a contract, contract renewal process, and nonrenewal. OPM did not receive any comments pertaining to this subpart, except for § 800.301. We are finalizing Subpart D as proposed.

#### Application Process (§ 800.301)

In § 800.301, OPM proposed a technical correction that it would consider annual applications from health insurance issuers to participate

in the MSP Program. We also specified that an existing MSP issuer could submit a renewal application to OPM annually. This correction is intended to clarify the distinction between new and renewal applications.

*Comment:* Commenters recommended that renewal applicants should be required to complete a full (not streamlined) application.

*Response:* Renewal applications require comprehensive and detailed responses to adequately inform OPM about whether to renew its contract with the issuer. OPM has, and will continue to use its experience in the FEHB Program to inform and guide its contracting process with MSP issuers to the extent such experience is applicable to the individual and small group markets within which the MSP Program operates. We are finalizing our proposal.

#### Subpart E—Compliance

In subpart E of 45 CFR part 800, OPM set forth standards and requirements with which MSP issuers must comply. This subpart also contains a non-exhaustive list of actions OPM may utilize in instances of non-compliance and the process by which OPM may reconsider any compliance actions we decide to take. In particular, this subpart includes sections regarding contract performance, contract quality assurance, fraud and abuse, compliance actions, and reconsideration of compliance actions. OPM did not receive any comments pertaining to this subpart, except for § 800.404. We are finalizing Subpart E as proposed.

#### Compliance Actions (§ 800.404)

In § 800.404(a)(4), OPM proposed to clarify that we may initiate a compliance action against an MSP issuer for violations of applicable law or the terms of its contract pursuant to OPM's authority under §§ 800.102 and 800.114. In § 800.404(b)(2), OPM clarified that compliance actions may include withdrawal of certification of an MSP option or options. We also added nonrenewal of participation as a compliance action in order to be consistent with the new paragraph under § 800.306(a)(2). In § 800.404(d), OPM clarified that requirements pertaining to notices to enrollees are triggered when one of the following occurs: The MSP Program contract is terminated, OPM withdraws certification of an MSP option, or if a State-level issuer's participation is not renewed.

*Comment:* Commenters suggested that OPM should establish a Federal standard to ensure a seamless transition for enrollees when a plan is terminated

or an enrollee is transferred to another issuer and enrolled in a new plan.

*Response:* To the extent that the MSP issuer is providing health insurance coverage in a Federally-facilitated Exchange, Federal requirements regarding notice to enrollees must be followed. MSP coverage offered in a State-based Exchange must meet the requirements of that specific State or Exchange to the extent there is no conflict with Federal law. This delineation is consistent with the approach for applicable requirements across the MSP Program. Therefore, we are adopting this section as final, with no changes.

#### Subpart G—Miscellaneous

In subpart G of 45 CFR part 800, OPM set forth requirements pertaining to coverage and disclosure of non-excepted abortion services and data-sharing with State entities.

#### Consumer Choice With Respect to Certain Services (§ 800.602)

We proposed adding a new paragraph (c) to § 800.602 that would require an MSP issuer to provide notice of coverage or exclusion of non-excepted abortion services in an MSP option. Under our proposal, an MSP issuer must disclose to consumers prior to enrollment the exclusion of non-excepted abortion services in a State where coverage of such abortion services is permitted by State law. We also proposed that if an MSP issuer provides an MSP option that covers non-excepted abortion services, in addition to an MSP option that excludes coverage, notice of coverage would also need to be provided to consumers prior to enrollment. Finally, OPM reserved the authority to review and approve these MSP notices and materials. OPM requested comments on the form and manner of these disclosures.

*Comments:* In general, commenters supported the proposed notice requirements. However, commenters expressed concern that consumers would receive notice that an MSP option excludes coverage of non-excepted abortion services only if the MSP option is offered in a State that permits coverage of non-excepted abortion services. Commenters argued that consumers may not know if their State permits coverage of non-excepted abortion services.

*Response:* We agree that it is in the best interests of consumers for an MSP issuer to provide notice if an MSP option excludes non-excepted abortion services from coverage in every State, not just the States that would permit coverage of such services. We have

amended the regulatory text to reflect this change.

*Comments:* Commenters also generally supported our proposal that an MSP issuer who offers an MSP option with coverage of non-excepted abortion services must provide notice of coverage of such services to consumers. We proposed that MSP issuers must provide this notice of coverage in a manner consistent with 45 CFR 147.200(a)(3) to meet the requirements of 45 CFR 156.280(f). Commenters offered a variety of suggestions on the form and manner of notices of coverage of non-excepted abortion services.

*Response:* We believe adding the disclosure and notice requirements will assist consumers in making informed decisions about their coverage options. Consumers should have accurate information on an MSP option's covered benefits, exclusions, and limitations. Therefore, we are finalizing this section as proposed, with changes to improve readability and clarity.

#### Disclosure of Information (§ 800.603)

OPM proposed this new section to clarify that OPM may use its discretion and authority to disclose information to State entities, including State Departments of Insurance and Exchanges, in order to keep such entities informed about the MSP Program and its issuers.

*Comments:* Commenters expressed concern that the language in the new section gives OPM but not States discretion to withhold information. Others supported the language in the new section, indicating that it will assist States in being better primary regulators.

*Response:* This section has been added to the rule to make it easier for States to obtain information from OPM on the MSP Program. This provision does not address disclosure of information from States to OPM, and therefore, this provision does not dictate information that a State may or may not withhold from OPM. We are finalizing this section as proposed.

#### Executive Orders 13563 and 12866; Regulatory Review

OPM has examined the impact of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993) and Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year adjusted for inflation). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more in any one year or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities;

(2) Create a 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 set forth in Executive Order 12866.

OPM will continue to generally operate the MSP Program as it previously had in plan year 2014. The regulatory changes in this final rule are for purposes of policy clarification, and any changes will have minimal impact on the administration of the Program. Administrative costs of the rule are generated both within OPM and by issuers offering MSP options. The costs that MSP issuers may incur are the same as those of QHPs, and as stated in 45 CFR part 156, will include: Accreditation, network adequacy standards, and quality reporting. The costs associated with MSP certification offset the costs that issuers would face were they to be certified by the State, or HHS on behalf of the State, to offer QHPs through the Exchange. For the 2014 plan year, there are approximately 371,000 consumers enrolled in MSP options and with an estimated average monthly premium of \$350, premiums collected by MSP issuers for consumers enrolled in MSP options are approximately \$1.4 billion this year. While the overall regulation and Program have a significant economic impact, this final rule provides for no substantial changes to the Program and is not economically significant.

We received one comment suggesting that the proposed rule could potentially have an economic impact of \$100 million or more per year. The commenter recommended OPM perform a full regulatory impact analysis.

Based on the analysis presented in our proposed rule and acknowledged

above, the economic impact of this rule is not expected to exceed the \$100 million threshold.

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1995<sup>6</sup> requires that the U.S. Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. OPM is not requiring any additional collections from MSP issuers or applicants seeking to become MSP issuers in this final rule. OPM continues to expect fewer than ten responsible entities to respond to all of the collections noted above. For that reason alone, the existing collections are exempt from the Paperwork Reduction Act.<sup>7</sup>

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)<sup>8</sup> requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of a rule on small entities, unless the head of the agency can certify that the rule would not have a significant economic impact on a substantial number of small entities. The RFA generally defines a "small entity" as—(1) A proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a not-for-profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of "small entity."

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a proposed rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, small non-profit organizations, and small government jurisdictions. Small businesses are those with sizes below thresholds established by the SBA. With respect to most health insurers, the SBA size standard is \$38.5 million in annual receipts.<sup>9</sup> Issuers

<sup>6</sup> 44 U.S.C. chapter 35; see 5 CFR part 1320.

<sup>7</sup> 44 U.S.C. 3502(3)(A)(i).

<sup>8</sup> 5 U.S.C. 601 *et seq.*

<sup>9</sup> According to the SBA size standards, entities with average annual receipts of \$38.5 million or less would be considered small entities for North American Industry Classification System (NAICS) Code 524114 (Direct Health and Medical Insurance Carriers) (for more information, see "Table of Size Standards Matched To North American Industry Classification System Codes," effective July 14, 2014, U.S. Small Business Administration, available at <http://www.sba.gov>).



could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be \$32.5 million or less.

OPM does not think that small businesses with annual receipts less than \$38.5 million would likely have sufficient economies of scale to become MSP issuers or be part of a group of MSP issuers. Similarly, while the Director must enter into an MSP Program contract with at least one non-profit entity, OPM does not think that small non-profit organizations would likely have sufficient economies of scale to become MSP issuers or be part of a group of MSP issuers. OPM does not think that this final rule would have a significant economic impact on a substantial number of small businesses with annual receipts less than \$38.5 million, because there are only a few health insurance issuers that could be considered small businesses. Moreover, while the Director must enter into an MSP contract with at least one non-profit entity, OPM does not think that this final rule would have a significant economic impact on a substantial number of small non-profit organizations, because few health insurance issuers are small non-profit organizations.

OPM incorporates by reference previous analysis by HHS, which provides some insight into the number of health insurance issuers that could be small entities. Based on HHS data from Medical Loss Ratio (MLR) annual report submissions for the 2013 MLR reporting year, approximately 141 out of 500 issuers of health insurance coverage nationwide had total premium revenues of \$38.5 million or less.<sup>10</sup> HHS estimates this data may overstate the actual number of small health insurance companies, since 77 percent of these small companies belong to larger holding groups, and many if not all of these small companies are likely to have non-health lines of business that would result in their revenues exceeding \$38.5 million. OPM concurs with this HHS analysis, and, thus, does not think that this final rule would have a significant economic impact on a substantial number of small entities.

Based on the foregoing, OPM is not preparing an analysis for the RFA because OPM has determined, and the Director certifies, that this final rule would not have a significant economic impact on a substantial number of small entities.

### Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA)<sup>11</sup> requires that agencies assess anticipated costs and benefits, and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. In 2015, that threshold is approximately \$154 million. UMRA does not address the total cost of a rule. Rather, it focuses on certain categories of costs, mainly those “Federal mandate” costs resulting from: (1) Imposing enforceable duties on State, local, or tribal governments, or on the private sector; or (2) increasing the stringency of conditions in, or decreasing the funding of, State, local, or tribal governments under entitlement programs.

This final rule does not place any Federal mandates on State, local, or Tribal governments, or on the private sector. This final rule would modify the MSP Program, a voluntary Federal program that provides health insurance issuers the opportunity to contract with OPM to offer MSP options on the Exchanges. Section 3 of UMRA excludes from the definition of “Federal mandate” duties that arise from participation in a voluntary Federal program. Accordingly, no analysis under UMRA is required.

### Federalism

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have “substantial direct effects” on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with State and local officials, and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the regulation.

This final rule has federalism implications because it has direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among various levels of

government. However, these sections of the regulation were not modified.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, OPM has engaged in efforts to consult with and work cooperatively with affected State and local officials, including attending meetings of the NAIC and consulting with State insurance officials on an individual basis. It is expected OPM will continue to act in a similar fashion in enforcing the Affordable Care Act requirements. Throughout the process of administering the MSP Program and developing this final regulation, OPM has attempted to balance the States’ interests in regulating health insurance issuers, and the statutory requirement to provide two MSP options in all Exchanges in the each States and the District of Columbia. By doing so, it is OPM’s view that it has complied with the requirements of Executive Order 13132.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signature affixed to this final regulation, OPM certifies that it has complied with the requirements of Executive Order 13132 for the attached regulation in a meaningful and timely manner.

### Congressional Review Act

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), which specifies that before a rule can take effect, the Federal agency promulgating the rule must submit to each House of Congress and to the Comptroller General a report containing a copy of the rule along with other specified information. In accordance with this requirement, OPM has transmitted this rule to Congress and the Comptroller General for review.

### List of Subjects in 5 CFR Part 800

Administrative practice and procedure, Health care, Health insurance, Reporting and recordkeeping requirements.

Office of Personnel Management.

**Katherine Archuleta,**  
*Director.*

Accordingly, the U.S. Office of Personnel Management is republishing part 800 to title 45, Code of Federal Regulations, as follows:

<sup>10</sup> 79 FR 70747.

<sup>11</sup> Public Law 104–4.

**PART 800—MULTI-STATE PLAN PROGRAM****Subpart A—General Provisions and Definitions**

- Sec.  
800.10 Basis and scope.  
800.20 Definitions.

**Subpart B—Multi-State Plan Program Issuer Requirements**

- 800.101 General requirements.  
800.102 Compliance with Federal law.  
800.103 Authority to contract with issuers.  
800.104 Phased expansion, etc.  
800.105 Benefits.  
800.106 Cost-sharing limits, advance payments of premium tax credits, and cost-sharing reductions.  
800.107 Levels of coverage.  
800.108 Assessments and user fees.  
800.109 Network adequacy.  
800.110 Service area.  
800.111 Accreditation requirement.  
800.112 Reporting requirements.  
800.113 Benefit plan material or information.  
800.114 Compliance with applicable State law.  
800.115 Level playing field.  
800.116 Process for dispute resolution.

**Subpart C—Premiums Rating Factors, Medical Loss Ratios, and Risk Adjustment**

- 800.201 General requirements.  
800.202 Rating factors.  
800.203 Medical loss ratio.  
800.204 Reinsurance, risk corridors, and risk adjustment.

**Subpart D—Application and Contracting Procedures**

- 800.301 Application process.  
800.302 Review of applications.  
800.303 MSP Program contracting.  
800.304 Term of the contract.  
800.305 Contract renewal process.  
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**Subpart E—Compliance**

- 800.401 Contract performance.  
800.402 Contract quality assurance.  
800.403 Fraud and abuse.  
800.404 Compliance actions.  
800.405 Reconsideration of compliance actions.

**Subpart F—Appeals by Enrollees of Denials of Claims for Payment or Service**

- 800.501 General requirements.  
800.502 MSP issuer internal claims and appeals.  
800.503 External review.  
800.504 Judicial review.

**Subpart G—Miscellaneous**

- 800.601 Reservation of authority.  
800.602 Consumer choice with respect to certain services.  
800.603 Disclosure of information.

**Authority:** Sec. 1334 of Pub. L. 111–148, 124 Stat. 119; Pub. L. 111–152, 124 Stat. 1029 (42 U.S.C. 18054).

**Subpart A—General Provisions and Definitions****§ 800.10 Basis and scope.**

- (a) *Basis.* This part is based on the following sections of title I of the Affordable Care Act:  
(1) 1001. Amendments to the Public Health Service Act.  
(2) 1302. Essential Health Benefits Requirements.  
(3) 1311. Affordable Choices of Health Benefit Plans.  
(4) 1324. Level Playing Field.  
(5) 1334. Multi-State Plans.  
(6) 1341. Transitional Reinsurance Program for Individual Market in Each State.  
(7) 1342. Establishment of Risk Corridors for Plans in Individual and Small Group Markets.  
(8) 1343. Risk Adjustment.  
(b) *Scope.* This part establishes standards for health insurance issuers to contract with the United States Office of Personnel Management (OPM) to offer Multi-State Plan (MSP) options to provide health insurance coverage on Exchanges for each State. It also establishes standards for appeal of a decision by OPM affecting the issuer's participation in the MSP Program and standards for an enrollee in an MSP option to appeal denials of payment or services by an MSP issuer.

**§ 800.20 Definitions.**

For purposes of this part:  
*Actuarial value (AV)* has the meaning given that term in 45 CFR 156.20.  
*Affordable Care Act* means the Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152).

*Applicant* means an issuer or group of issuers that has submitted an application to OPM to be considered for participation in the Multi-State Plan Program.

*Benefit plan material or information* means explanations or descriptions, whether printed or electronic, that describe a health insurance issuer's products. The term does not include a policy or contract for health insurance coverage.

*Cost sharing* has the meaning given that term in 45 CFR 155.20.

*Director* means the Director of the United States Office of Personnel Management.

*EHB-benchmark plan* has the meaning given that term in 45 CFR 156.20.

*Exchange* means a governmental agency or non-profit entity that meets the applicable requirements of 45 CFR part 155 and makes qualified health

plans (QHPs) and MSP options available to qualified individuals and qualified employers. Unless otherwise identified, this term refers to State Exchanges, regional Exchanges, subsidiary Exchanges, and a Federally-facilitated Exchange.

*Federal Employees Health Benefits Program* or *FEHB Program* means the health benefits program administered by the United States Office of Personnel Management pursuant to chapter 89 of title 5, United States Code.

*Group of issuers* means:

(1) A group of health insurance issuers that are affiliated either by common ownership and control or by common use of a nationally licensed service mark (as defined in this section); or

(2) An affiliation of health insurance issuers and an entity that is not an issuer but that owns a nationally licensed service mark (as defined in this section).

*Health insurance coverage* means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer. Health insurance coverage includes group health insurance coverage, individual health insurance coverage, and short-term, limited duration insurance.

*Health insurance issuer* or *issuer* means an insurance company, insurance service, or insurance organization (including a health maintenance organization) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law that regulates insurance (within the meaning of section 514(b)(2) of the Employee Retirement Income Security Act (ERISA)). This term does not include a group health plan as defined in 45 CFR 146.145(a).

*HHS* means the United States Department of Health and Human Services.

*Level of coverage* means one of four standardized actuarial values of plan coverage as defined by section 1302(d)(1) of the Affordable Care Act.

*Licensure* means the authorization obtained from the appropriate State official or regulatory authority to offer health insurance coverage in the State.

*Multi-State Plan Program issuer* or *MSP issuer* means a health insurance issuer or group of issuers (as defined in this section) that has a contract with OPM to offer health plans pursuant to section 1334 of the Affordable Care Act and meets the requirements of this part.

*Multi-State Plan option* or *MSP option* means a discrete pairing of a package of benefits with particular cost sharing (which does not include premium rates or premium rate quotes) that is offered pursuant to a contract with OPM pursuant to section 1334 of the Affordable Care Act and meets the requirements of 45 CFR part 800.

*Multi-State Plan Program* or *MSP Program* means the program administered by OPM pursuant to section 1334 of the Affordable Care Act.

*Nationally licensed service mark* means a word, name, symbol, or device, or any combination thereof, that an issuer or group of issuers uses consistently nationwide to identify itself.

*Non-profit entity* means:

- (1) An organization that is incorporated under State law as a non-profit entity and licensed under State law as a health insurance issuer; or
- (2) A group of health insurance issuers licensed under State law, a substantial portion of which are incorporated under State law as non-profit entities.

*OPM* means the United States Office of Personnel Management.

*Percentage of total allowed cost of benefits* has the meaning given that term in 45 CFR 156.20.

*Plan year* means a consecutive 12-month period during which a health plan provides coverage for health benefits. A plan year may be a calendar year or otherwise.

*Prompt payment* means a requirement imposed on a health insurance issuer to pay a provider or enrollee for a claimed benefit or service within a defined time period, including the penalty or consequence imposed on the issuer for failure to meet the requirement.

*Qualified Health Plan* or *QHP* means a health plan that has in effect a certification that it meets the standards described in subpart C of 45 CFR part 156 issued or recognized by each Exchange through which such plan is offered pursuant to the process described in subpart K of 45 CFR part 155.

*Rating* means the process, including rating factors, numbers, formulas, methodologies, and actuarial assumptions, used to set premiums for a health plan.

*Secretary* means the Secretary of the Department of Health and Human Services.

*SHOP* means a Small Business Health Options Program operated by an Exchange through which a qualified employer can provide its employees and their dependents with access to one or more qualified health plans (QHPs).

*Silver plan variation* has the meaning given that term in 45 CFR 156.400.

*Small employer* means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 100 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. In the case of plan years beginning before January 1, 2016, a State may elect to define *small employer* by substituting “50 employees” for “100 employees.”

*Standard plan* has the meaning given that term in 45 CFR 156.400.

*State Insurance Commissioner* means the commissioner or other chief insurance regulatory official of a State.

*State* means each of the 50 States or the District of Columbia.

*State-level issuer* means a health insurance issuer designated by the Multi-State Plan (MSP) issuer to offer an MSP option or MSP options. The State-level issuer may offer health insurance coverage through an MSP option in all or part of one or more States.

#### **Subpart B—Multi-State Plan Program Issuer Requirements**

##### **§ 800.101 General requirements.**

An MSP issuer must:

- (a) *Licensed*. Be licensed as a health insurance issuer in each State where it offers health insurance coverage;
- (b) *Contract with OPM*. Have a contract with OPM pursuant to this part;
- (c) *Required levels of coverage*. Offer levels of coverage as required by § 800.107 of this part;
- (d) *Eligibility and enrollment*. MSP options and MSP issuers must meet the same requirements for eligibility, enrollment, and termination of coverage as those that apply to QHPs and QHP issuers pursuant to 45 CFR part 155, subparts D, E, and H, and 45 CFR 156.250, 156.260, 156.265, 156.270, and 156.285;

(e) *Applicable to each MSP issuer*. Ensure that each of its MSP options meets the requirements of this part;

(f) *Compliance*. Comply with all standards set forth in this part;

(g) *OPM direction and other legal requirements*. Timely comply with OPM instructions and directions and with other applicable law; and

(h) *Other requirements*. Meet such other requirements as determined appropriate by OPM, in consultation with HHS, pursuant to section 1334(b)(4) of the Affordable Care Act.

(i) *Non-discrimination*. MSP options and MSP issuers must comply with applicable Federal and State non-

discrimination laws, including the standards set forth in 45 CFR 156.125 and 156.200(e).

##### **§ 800.102 Compliance with Federal law.**

(a) *Public Health Service Act*. As a condition of participation in the MSP Program, an MSP issuer must comply with applicable provisions of part A of title XXVII of the PHS Act. Compliance shall be determined by the Director.

(b) *Affordable Care Act*. As a condition of participation in the MSP Program, an MSP issuer must comply with applicable provisions of title I of the Affordable Care Act. Compliance shall be determined by the Director.

##### **§ 800.103 Authority to contract with issuers.**

(a) *General*. OPM may enter into contracts with health insurance issuers to offer at least two MSP options on Exchanges and SHOPS in each State, without regard to any statutes that would otherwise require competitive bidding.

(b) *Non-profit entity*. In entering into contracts with health insurance issuers to offer MSP options, OPM will enter into a contract with at least one non-profit entity as defined in § 800.20 of this part.

(c) *Group of issuers*. Any contract to offer MSP options may be with a group of issuers as defined in § 800.20 of this part.

(d) *Individual and group coverage*. The contracts will provide for individual health insurance coverage and for group health insurance coverage for small employers.

##### **§ 800.104 Phased expansion, etc.**

(a) *Phase-in*. OPM may enter into a contract with a health insurance issuer to offer MSP options if the health insurance issuer agrees that:

(1) With respect to the first year for which the health insurance issuer offers MSP options, the health insurance issuer will offer MSP options in at least 60 percent of the States;

(2) With respect to the second such year, the health insurance issuer will offer the MSP options in at least 70 percent of the States;

(3) With respect to the third such year, the health insurance issuer will offer the MSP options in at least 85 percent of the States; and

(4) With respect to each subsequent year, the health insurance issuer will offer the MSP options in all States.

(b) *Partial coverage within a State*. (1) OPM may enter into a contract with an MSP issuer even if the MSP issuer's MSP options for a State cover fewer than all the service areas specified for

that State pursuant to § 800.110 of this part.

(2) If an issuer offers both an MSP option and QHP on the same Exchange, an MSP issuer must offer MSP coverage in a service area or areas that is equal to the greater of:

(i) The QHP service area defined by the issuer or,

(ii) The service area specified for that State pursuant to § 800.110 of this part covered by the issuer's QHP.

(c) *Participation in SHOPS.* (1) An MSP issuer's participation in a Federally-facilitated SHOP must be consistent with the requirements for QHP issuers specified in 45 CFR 156.200(g).

(2) An MSP issuer must comply with State standards governing participation in a State-based SHOP, consistent with § 800.114. For these State-based SHOP standards, OPM retains discretion to allow an MSP issuer to phase-in SHOP participation in States pursuant to section 1334(e) of the Affordable Care Act.

(d) *Licensed where offered.* OPM may enter into a contract with an MSP issuer who is not licensed in every State, provided that the issuer is licensed in every State where it offers MSP coverage through any Exchanges in that State and demonstrates to OPM that it is making a good faith effort to become licensed in every State consistent with the timeframe in paragraph (a) of this section.

#### § 800.105 Benefits.

(a) *Package of benefits.* (1) An MSP issuer must offer a package of benefits that includes the essential health benefits (EHB) described in section 1302 of the Affordable Care Act for each MSP option within a State.

(2) The package of benefits referred to in paragraph (a)(1) of this section must comply with section 1302 of the Affordable Care Act, as well as any applicable standards set by OPM and any applicable standards set by HHS.

(b) *Package of benefits options.* (1) An MSP issuer must offer at least one uniform package of benefits in each State that is substantially equal to:

(i) The EHB-benchmark plan in each State in which it operates; or

(ii) Any EHB-benchmark plan selected by OPM under paragraph (c) of this section.

(2) An issuer applying to participate in the MSP Program may select either or both of the package of benefits options described in paragraph (b)(1) of this section in its application. In each State, the issuer may choose one EHB-benchmark for each product it offers.

(3) An MSP issuer must comply with any State standards relating to

substitution of benchmark benefits or standard benefit designs.

(c) *OPM selection of benchmark plans.* (1) The OPM-selected EHB-benchmark plans are the three largest Federal Employees Health Benefits (FEHB) Program plan options, as identified by HHS pursuant to section 1302(b) of the Affordable Care Act, and as supplemented pursuant to paragraphs (c)(2) through (5) of this section.

(2) Any EHB-benchmark plan selected by OPM under paragraph (c)(1) lacking coverage of pediatric oral services or pediatric vision services must be supplemented by the addition of the entire category of benefits from the largest Federal Employee Dental and Vision Insurance Program (FEDVIP) dental or vision plan options, respectively, pursuant to 45 CFR 156.110(b) and section 1302(b) of the Affordable Care Act.

(3) In all States where an MSP issuer uses the OPM-selected EHB-benchmark plan, the MSP issuer may manage formularies around the needs of anticipated or actual users, subject to approval by OPM.

(4) An MSP issuer must follow the definition of habilitative services and devices as follows:

(i) An MSP issuer must follow the Federal definitions where HHS specifically defines habilitative services and devices if the State does not define the term, if the State defines the term in a conflicting way, or if the State definition is less stringent than the Federal definition.

(ii) An MSP issuer must follow State definitions where the State specifically defines the habilitative services and devices category pursuant to 45 CFR 156.110(f) and the State definition is not in conflict with the Federal definition or goes above the standards set in the Federal definition.

(iii) In the case of any State that does not define this category and absent a clearly applicable Federal definition, if any OPM-selected EHB-benchmark plan lacks coverage of habilitative services and devices, OPM may determine what habilitative services and devices are to be included in that EHB-benchmark plan.

(5) Any EHB-benchmark plan selected by OPM under paragraph (c)(1) of this section must include, for each State, any State-required benefits enacted before December 31, 2011, that are included in the State's EHB-benchmark plan as described in paragraph (b)(1)(i) of this section, or specific to the market in which the plan is offered.

(d) *OPM approval.* An MSP issuer's package of benefits, including its formulary, must be submitted for

approval by OPM, which will review a package of benefits proposed by an MSP issuer and determine if it is substantially equal to an EHB-benchmark plan described in paragraph (b)(1) of this section, pursuant to standards set forth by OPM and any applicable standards set forth by HHS, including 45 CFR 156.115, 156.122, and 156.125.

(e) *State payments for additional State-required benefits.* If a State requires that benefits in addition to the benchmark package be offered to MSP enrollees in that State, then pursuant to section 1334(c)(2) of the Affordable Care Act, the State must defray the cost of such additional benefits by making payments either to the enrollee or to the MSP issuer on behalf of the enrollee.

#### § 800.106 Cost-sharing limits, advance payments of premium tax credits, and cost-sharing reductions.

(a) *Cost-sharing limits.* For each MSP option it offers, an MSP issuer must ensure that the cost-sharing provisions of the MSP option comply with section 1302(c) of the Affordable Care Act, as well as any applicable standards set by OPM or HHS.

(b) *Advance payments of premium tax credits and cost-sharing reductions.* For each MSP option it offers, an MSP issuer must ensure that an eligible individual receives the benefit of advance payments of premium tax credits under section 36B of the Internal Revenue Code and the cost-sharing reductions under section 1402 of the Affordable Care Act. An MSP issuer must also comply with any applicable standards set by OPM or HHS.

#### § 800.107 Levels of coverage.

(a) *Silver and gold levels of coverage required.* An MSP issuer must offer at least one MSP option at the silver level of coverage and at least one MSP option at the gold level of coverage on each Exchange in which the issuer is certified to offer an MSP option pursuant to a contract with OPM.

(b) *Bronze or platinum metal levels of coverage permitted.* Pursuant to a contract with OPM, an MSP issuer may offer one or more MSP options at the bronze level of coverage or the platinum level of coverage, or both, on any Exchange or SHOP in any State.

(c) *Child-only plans.* For each level of coverage, the MSP issuer must offer a child-only MSP option at the same level of coverage as any health insurance coverage offered to individuals who, as of the beginning of the plan year, have not attained the age of 21.

(d) *Plan variations for the reduction or elimination of cost-sharing.* An MSP

issuer must comply with section 1402 of the Affordable Care Act, as well as any applicable standards set by OPM or HHS.

(e) *OPM approval.* An MSP issuer must submit the levels of coverage plans and plan variations to OPM for review and approval by OPM.

#### **§ 800.108 Assessments and user fees.**

(a) *Discretion to charge assessment and user fees.* Beginning in plan year 2015, OPM may require an MSP issuer to pay an assessment or user fee as a condition of participating in the MSP Program.

(b) *Determination of amount.* The amount of the assessment or user fee charged by OPM for a plan year is the amount determined necessary by OPM to meet the costs of OPM's functions under the Affordable Care Act for a plan year, including but not limited to such functions as entering into contracts with, certifying, recertifying, decertifying, and overseeing MSP options and MSP issuers for that plan year. The amount of the assessment or user fee charged by OPM will be offset against the assessment or user fee amount required by any State-based Exchange or federally-facilitated Exchange such that the total of all assessments and user fees paid by the MSP issuer for the year for the MSP option shall be no greater than nor less than the amount of the assessment or user fee paid by QHP issuers in that State-based Exchange or federally-facilitated Exchange for that year.

(c) *Process for collecting MSP assessment or user fees.* OPM may require an MSP issuer to make payment of the MSP Program assessment or user fee amount directly to OPM, or may establish other mechanisms for the collection process.

#### **§ 800.109 Network adequacy.**

(a) *General requirement.* An MSP issuer must ensure that the provider network of each of its MSP options, as available to all enrollees, meets the following standards:

(1) Maintains a network that is sufficient in number and types of providers to assure that all services will be accessible without unreasonable delay;

(2) Is consistent with the network adequacy provisions of section 2702(c) of the Public Health Service Act; and

(3) Includes essential community providers in compliance with 45 CFR 156.235.

(b) *Provider directory.* An MSP issuer must make its provider directory for an MSP option available to the Exchange for publication online pursuant to

guidance from the Exchange and to potential enrollees in hard copy, upon request. In the provider directory, an MSP issuer must identify providers that are not accepting new patients.

(c) *OPM guidance.* OPM will issue guidance containing the criteria and standards that it will use to determine the adequacy of a provider network.

#### **§ 800.110 Service area.**

An MSP issuer must offer an MSP option within one or more service areas in a State defined by each Exchange pursuant to 45 CFR 155.1055. If an Exchange permits issuers to define their service areas, an MSP issuer must obtain OPM's approval for its proposed service areas. Pursuant to § 800.104 of this part, OPM may enter into a contract with an MSP issuer even if the MSP issuer's MSP options for a State cover fewer than all the service areas specified for that State. MSP options will follow the same standards for service areas for QHPs pursuant to 45 CFR 155.1055.

#### **§ 800.111 Accreditation requirement.**

(a) *General requirement.* An MSP issuer must be or become accredited consistent with the requirements for QHP issuers specified in section 1311 of the Affordable Care Act and 45 CFR 156.275(a)(1).

(b) *Release of survey.* An MSP issuer must authorize the accrediting entity that accredits the MSP issuer to release to OPM and to the Exchange a copy of its most recent accreditation survey, together with any survey-related information that OPM or an Exchange may require, such as corrective action plans and summaries of findings.

(c) *Timeframe for accreditation.* An MSP issuer that is not accredited as of the date that it enters into a contract with OPM must become accredited within the timeframe established by OPM as authorized by 45 CFR 155.1045.

#### **§ 800.112 Reporting requirements.**

(a) *OPM specification of reporting requirements.* OPM will specify the data and information that must be reported by an MSP issuer, including data permitted or required by the Affordable Care Act and such other data as OPM may determine necessary for the oversight and administration of the MSP Program. OPM will also specify the form, manner, processes, and frequency for the reporting of data and information. The Director may require that MSP issuers submit claims payment and enrollment data to facilitate OPM's oversight and administration of the MSP Program in a manner similar to the FEHB Program.

(b) *Quality and quality improvement standards.* An MSP issuer must comply with any standards required by OPM for reporting quality and quality improvement activities, including but not limited to implementation of a quality improvement strategy, disclosure of quality measures to enrollees and prospective enrollees, reporting of pediatric quality measures, and implementation of rating and enrollee satisfaction surveys, which will be similar to standards under section 1311(c)(1)(E), (H), and (I), (c)(3), and (c)(4) of the Affordable Care Act.

#### **§ 800.113 Benefit plan material or information.**

(a) *Compliance with Federal and State law.* An MSP issuer must comply with Federal and State laws relating to benefit plan material or information, including the provisions of this section and guidance issued by OPM specifying its standards, process, and timeline for approval of benefit plan material or information.

(b) *General standards for MSP applications and notices.* An MSP issuer must provide all applications and notices to enrollees in accordance with the standards described in 45 CFR 155.205(c). OPM may establish additional standards to meet the needs of MSP enrollees.

(1) *Accuracy.* An MSP issuer is responsible for the accuracy of its benefit plan material or information.

(2) *Truthful, not misleading, no material omissions, and plain language.* All benefit plan material or information must be:

(i) Truthful, not misleading, and without material omissions; and

(ii) Written in plain language, as defined in section 1311(e)(3)(B) of the Affordable Care Act.

(3) *Uniform explanation of coverage documents and standardized definitions.* An MSP issuer must comply with the provisions of section 2715 of the PHS Act and regulations issued to implement that section.

(4) *OPM review and approval of benefit plan material or information.* OPM may request an MSP issuer to submit to OPM benefit plan material or information, as defined in § 800.20. OPM reserves the right to review and approve benefit plan material or information to ensure that an MSP issuer complies with Federal and State laws, and the standards prescribed by OPM with respect to benefit plan material or information.

(5) *Statement on certification by OPM.* An MSP issuer may include a statement in its benefit plan material or information that:

(i) OPM has certified the MSP option as eligible to be offered on the Exchange; and

(ii) OPM monitors the MSP option for compliance with all applicable law.

**§ 800.114 Compliance with applicable State law.**

(a) *Compliance with State law.* An MSP issuer must, with respect to each of its MSP options, generally comply with State law pursuant to section 1334(b)(2) of the Affordable Care Act. However, the MSP options and MSP issuers are not subject to State laws that:

(1) Are inconsistent with section 1334 of the Affordable Care Act or this part;

(2) Prevent the application of a requirement of part A of title XXVII of the PHS Act; or

(3) Prevent the application of a requirement of title I of the Affordable Care Act.

(b) *Determination of inconsistency.* After consultation with the State and HHS, OPM reserves the right to determine, in its judgment, as effectuated through an MSP Program contract, these regulations, or OPM guidance, whether the standards set forth in paragraph (a) of this section are satisfied with respect to particular State laws.

**§ 800.115 Level playing field.**

An MSP issuer must, with respect to each of its MSP options, meet the following requirements in order to ensure a level playing field, subject to § 800.114:

(a) *Guaranteed renewal.* Guarantee that an enrollee can renew enrollment in an MSP option in compliance with sections 2703 and 2742 of the PHS Act;

(b) *Rating.* In proposing premiums for OPM approval, use only the rating factors permitted under section 2701 of the PHS Act and State law;

(c) *Preexisting conditions.* Not impose any preexisting condition exclusion and comply with section 2704 of the PHS Act;

(d) *Non-discrimination.* Comply with section 2705 of the PHS Act;

(e) *Quality improvement and reporting.* Comply with all Federal and State quality improvement and reporting requirements. Quality improvement and reporting means quality improvement as defined in section 1311(h) of the Affordable Care Act and quality improvement plans or strategies required under State law, and quality reporting as defined in section 2717 of the PHS Act and section 1311(g) of the Affordable Care Act. Quality improvement also includes activities such as, but not limited to, implementation of a quality

improvement strategy, disclosure of quality measures to enrollees and prospective enrollees, and reporting of pediatric quality measures, which will be similar to standards under section 1311(c)(1)(E), (H), and (I) of the Affordable Care Act;

(f) *Fraud and abuse.* Comply with all Federal and State fraud and abuse laws;

(g) *Licensure.* Be licensed in every State in which it offers an MSP option;

(h) *Solvency and financial requirements.* Comply with the solvency standards set by each State in which it offers an MSP option;

(i) *Market conduct.* Comply with the market conduct standards of each State in which it offers an MSP option;

(j) *Prompt payment.* Comply with applicable State law in negotiating the terms of payment in contracts with its providers and in making payments to claimants and providers;

(k) *Appeals and grievances.* Comply with Federal standards under section 2719 of the PHS Act for appeals and grievances relating to adverse benefit determinations, as described in subpart F of this part;

(l) *Privacy and confidentiality.* Comply with all Federal and State privacy and security laws and requirements, including any standards required by OPM in guidance or contract, which will be similar to the standards contained in 45 CFR part 164 and applicable State law; and

(m) *Benefit plan material or information.* Comply with Federal and State law, including § 800.113 of this part.

**§ 800.116 Process for dispute resolution.**

(a) *Determinations about applicability of State law under section 1334(b)(2) of the Affordable Care Act.* In the event of a dispute about the applicability to an MSP option or MSP issuer of a State law, the State may request that OPM reconsider a determination that an MSP option or MSP issuer is not subject to such State law.

(b) *Required demonstration.* A State making a request under paragraph (a) of this section must demonstrate that the State law at issue:

(1) Is not inconsistent with section 1334 of the Affordable Care Act or this part;

(2) Does not prevent the application of a requirement of part A of title XXVII of the PHS Act; and

(3) Does not prevent the application of a requirement of title I of the Affordable Care Act.

(c) *Request for review.* The request must be in writing and include contact information, including the name, telephone number, email address, and

mailing address of the person or persons whom OPM may contact regarding the request for review. The request must be in such form, contain such information, and be submitted in such manner and within such timeframe as OPM may prescribe.

(1) The requester may submit to OPM any relevant information to support its request.

(2) OPM may obtain additional information relevant to the request from any source as it may, in its judgment, deem necessary. OPM will provide the requester with a copy of any additional information it obtains and provide an opportunity for the requester to respond (including by submission of additional information or explanation).

(3) OPM will issue a written decision within 60 calendar days after receiving the written request, or after the due date for a response under paragraph (c)(2) of this section, whichever is later, unless a different timeframe is agreed upon.

(4) OPM's written decision will constitute final agency action that is subject to review under the Administrative Procedure Act in the appropriate U.S. district court. Such review is limited to the record that was before OPM when OPM made its decision.

**Subpart C—Premiums, Rating Factors, Medical Loss Ratios, and Risk Adjustment**

**§ 800.201 General requirements.**

(a) *Premium negotiation.* OPM will negotiate annually with an MSP issuer, on a State by State basis, the premiums for each MSP option offered by that issuer in that State. Such negotiations may include negotiations about the cost-sharing provisions of an MSP option.

(b) *Duration.* Premiums will remain in effect for the plan year.

(c) *Guidance on rate development.* OPM will issue guidance addressing methods for the development of premiums for the MSP Program. That guidance will follow State rating standards generally applicable in a State, to the greatest extent practicable.

(d) *Calculation of actuarial value.* An MSP issuer must calculate actuarial value in the same manner as QHP issuers under section 1302(d) of the Affordable Care Act, as well as any applicable standards set by OPM or HHS.

(e) *OPM rate review process.* An MSP issuer must participate in the rate review process established by OPM to negotiate rates for MSP options. The rate review process established by OPM will be similar to the process established by HHS pursuant to section 2794 of the

PHS Act and disclosure and review standards established under 45 CFR part 154.

(f) *State effective rate review.* With respect to its MSP options, an MSP issuer is subject to a State's rate review process, including a State's Effective Rate Review Program established by HHS pursuant to section 2794 of the PHS Act and 45 CFR part 154. In the event HHS is reviewing rates for a State pursuant to section 2794 of the PHS Act, HHS will defer to OPM's judgment regarding the MSP options' proposed rate increase. If a State withholds approval of an MSP option and OPM determines, in its discretion, that the State's action would prevent OPM from administering the MSP Program, OPM retains authority to make the final decision to approve rates for participation in the MSP Program, notwithstanding the absence of State approval.

(g) *Single risk pool.* An MSP issuer must consider all enrollees in an MSP option to be in the same risk pool as all enrollees in all other health plans in the individual market or the small group market, respectively, in compliance with section 1312(c) of the Affordable Care Act, 45 CFR 156.80, and any applicable Federal or State laws and regulations implementing that section.

#### **§ 800.202 Rating factors.**

(a) *Permissible rating factors.* In proposing premiums for each MSP option, an MSP issuer must use only the rating factors permitted under section 2701 of the PHS Act.

(b) *Application of variations based on age or tobacco use.* Rating variations permitted under section 2701 of the PHS Act must be applied by an MSP issuer based on the portion of the premium attributable to each family member covered under the coverage in accordance with any applicable Federal or State laws and regulations implementing section 2701(a) of the PHS Act.

(c) *Age rating.* For age rating, an MSP issuer must use the ratio established by the State in which the MSP option is offered, if it is less than 3:1.

(1) *Age bands.* An MSP issuer must use the uniform age bands established under HHS regulations implementing section 2701(a) of the PHS Act.

(2) *Age curves.* An MSP issuer must use the age curves established under HHS regulations implementing section 2701(a) of the PHS Act, or age curves established by a State pursuant to HHS regulations.

(d) *Rating areas.* An MSP issuer must use the rating areas appropriate to the State in which the MSP option is offered

and established under HHS regulations implementing section 2701(a) of the PHS Act.

(e) *Tobacco rating.* An MSP issuer must apply tobacco use as a rating factor in accordance with any applicable Federal or State laws and regulations implementing section 2701(a) of the PHS Act.

(f) *Wellness programs.* An MSP issuer must comply with any applicable Federal or State laws and regulations implementing section 2705 of the PHS Act.

#### **§ 800.203 Medical loss ratio.**

(a) *Required medical loss ratio.* An MSP issuer must attain:

(1) The medical loss ratio (MLR) required under section 2718 of the PHS Act and regulations promulgated by HHS; and

(2) Any MSP-specific MLR that OPM may set in the best interests of MSP enrollees or that is necessary to be consistent with a State's requirements with respect to MLR.

(b) *Consequences of not attaining required medical loss ratio.* If an MSP issuer fails to attain an MLR set forth in paragraph (a) of this section, OPM may take any appropriate action, including but not limited to intermediate sanctions, such as suspension of marketing, decertifying an MSP option in one or more States, or terminating an MSP issuer's contract pursuant to § 800.404 of this part.

#### **§ 800.204 Reinsurance, risk corridors, and risk adjustment.**

(a) *Transitional reinsurance program.* An MSP issuer must comply with section 1341 of the Affordable Care Act, 45 CFR part 153, and any applicable Federal or State regulations under section 1341 that set forth requirements to implement the transitional reinsurance program for the individual market.

(b) *Temporary risk corridors program.* An MSP issuer must comply with section 1342 of the Affordable Care Act, 45 CFR part 153, and any applicable Federal regulations under section 1342 that set forth requirements to implement the risk corridor program.

(c) *Risk adjustment program.* An MSP issuer must comply with section 1343 of the Affordable Care Act, 45 CFR part 153, and any applicable Federal or State regulations under section 1343 that set forth requirements to implement the risk adjustment program.

### **Subpart D—Application and Contracting Procedures**

#### **§ 800.301 Application process.**

(a) Acceptance of applications. Without regard to 41 U.S.C. 6101(b)–(d), or any other statute requiring competitive bidding, OPM may consider annual applications from health insurance issuers, including groups of health insurance issuers as defined in § 800.20, to participate in the MSP Program. If OPM determines that it is not beneficial for the MSP Program to consider new issuer applications for an upcoming year, OPM will issue a notice to that effect. Each existing MSP issuer may complete a renewal application annually.

(b) *Form and manner of applications.* An applicant must submit to OPM, in the form and manner and in accordance with the timeline specified by OPM, the information requested by OPM for determining whether an applicant meets the requirements of this part.

#### **§ 800.302 Review of applications.**

(a) *Determinations.* OPM will determine if an applicant meets the requirements of this part. If OPM determines that an applicant meets the requirements of this part, OPM may accept the applicant to enter into contract negotiations with OPM to participate in the MSP Program.

(b) *Requests for additional information.* OPM may request additional information from an applicant before making a decision about whether to enter into contract negotiations with that applicant to participate in the MSP Program.

(c) *Declination of application.* If, after reviewing an application to participate in the MSP Program, OPM declines to enter into contract negotiations with the applicant, OPM will inform the applicant in writing of the reasons for that decision.

(d) *Discretion.* The decision whether to enter into contract negotiations with a health insurance issuer who has applied to participate in the MSP Program is committed to OPM's discretion.

(e) *Impact on future applications.* OPM's declination of an application to participate in the MSP Program will not preclude the applicant from submitting an application for a subsequent year to participate in the MSP Program.

#### **§ 800.303 MSP Program contracting.**

(a) *Participation in MSP Program.* To become an MSP issuer, the applicant and the Director or the Director's designee must sign a contract that meets the requirements of this part.

(b) *Standard contract.* OPM will establish a standard contract for the MSP Program.

(c) *Premiums.* OPM and the applicant will negotiate the premiums for an MSP option for each plan year in accordance with the provisions of subpart C of this part.

(d) *Package of benefits.* OPM must approve the applicant's package of benefits for its MSP option.

(e) *Additional terms and conditions.*

OPM may elect to negotiate with an applicant such additional terms, conditions, and requirements that:

(1) Are in the interests of MSP enrollees; or

(2) OPM determines to be appropriate.

(f) Certification to offer health insurance coverage.

(1) For each plan year, an MSP Program contract will specify MSP options that OPM has certified, the specific package(s) of benefits authorized to be offered on each Exchange, and the premiums to be charged for each package of benefits on each Exchange.

(2) An MSP issuer may not offer an MSP option on an Exchange unless its MSP Program contract with OPM includes a certification authorizing the MSP issuer to offer the MSP option on that Exchange in accordance with paragraph (f)(1) of this section.

#### **§ 800.304 Term of the contract.**

(a) *Term of a contract.* The term of the contract will be specified in the MSP Program contract and must be for a period of at least the 12 consecutive months defined as the plan year.

(b) *Plan year.* The plan year is a consecutive 12-month period during which an MSP option provides coverage for health benefits. A plan year may be a calendar year or otherwise.

#### **§ 800.305 Contract renewal process.**

(a) *Renewal.* To continue participating in the MSP Program, an MSP issuer must provide to OPM, in the form and manner and in accordance with the timeline prescribed by OPM, the information requested by OPM for determining whether the MSP issuer continues to meet the requirements of this part.

(b) *OPM decision.* Subject to paragraph (c) of this section, OPM will renew the MSP Program contract of an MSP issuer who timely submits the information described in paragraph (a).

(c) *OPM discretion not to renew.* OPM may decline to renew the contract of an MSP issuer if:

(1) OPM and the MSP issuer fail to agree on premiums and benefits for an MSP option for the subsequent plan year;

(2) The MSP issuer has engaged in conduct described in § 800.404(a) of this part; or

(3) OPM determines that the MSP issuer will be unable to comply with a material provision of section 1334 of the Affordable Care Act or this part.

(d) *Failure to agree on premiums and benefits.* Except as otherwise provided in this part, if an MSP issuer has complied with paragraph (a) of this section and OPM and the MSP issuer fail to agree on premiums and benefits for an MSP option on one or more Exchanges for the subsequent plan year by the date required by OPM, either party may provide notice of nonrenewal pursuant to § 800.306 of this part, or OPM may in its discretion withdraw the certification of that MSP option on the Exchange or Exchanges for that plan year. In addition, if OPM and the MSP issuer fail to agree on benefits and premiums for an MSP option on one or more Exchanges by the date set by OPM and in the event of no action (no notice of nonrenewal or renewal) by either party, the MSP Program contract will be renewed and the existing premiums and benefits for that MSP option on that Exchange or Exchanges will remain in effect for the subsequent plan year.

#### **§ 800.306 Nonrenewal.**

(a) *Nonrenewal.* Nonrenewal may pertain to the MSP issuer or the State-level issuer. The circumstances under which nonrenewal may occur are:

(1) *Nonrenewal of contract.* As used in this subpart and subpart E of this part, "nonrenewal of contract" means a decision by either OPM or an MSP issuer not to renew an MSP Program contract.

(2) *Nonrenewal of participation.* As used in this subpart and subpart E of this part, "nonrenewal of participation" means a decision by OPM, an MSP issuer, or a State-level issuer not to renew a State-level issuer's participation in a MSP Program contract.

(b) *Notice required.* Either OPM or an MSP issuer may decline to renew an MSP Program contract by providing a written notice of nonrenewal to the other party.

(c) *MSP issuer responsibilities.* The MSP issuer's written notice of nonrenewal must be made in accordance with its MSP Program contract with OPM. The MSP issuer also must comply with any requirements regarding the termination of a plan that are applicable to a QHP offered on an Exchange on which the MSP option was offered, including a requirement to provide advance written notice of termination to enrollees. MSP issuers

shall provide written notice to enrollees in accordance with § 800.404(d).

### **Subpart E—Compliance**

#### **§ 800.401 Contract performance.**

(a) *General.* An MSP issuer must perform an MSP Program contract with OPM in accordance with the requirements of section 1334 of the Affordable Care Act and this part. The MSP issuer must continue to meet such requirements while under an MSP Program contract with OPM.

(b) *Specific requirements for issuers.* In addition to the requirements described in paragraph (a) of this section, each MSP issuer must:

(1) Have, in the judgment of OPM, the financial resources to carry out its obligations under the MSP Program;

(2) Keep such reasonable financial and statistical records, and furnish to OPM such reasonable financial and statistical reports with respect to the MSP option or the MSP issuer, as may be requested by OPM;

(3) Permit representatives of OPM (including the OPM Office of Inspector General), the U.S. Government Accountability Office, and any other applicable Federal Government auditing entities to audit and examine its records and accounts that pertain, directly or indirectly, to the MSP option at such reasonable times and places as may be designated by OPM or the U.S. Government Accountability Office;

(4) Timely submit to OPM a properly completed and signed novation or change-of-name agreement in accordance with subpart 42.12 of 48 CFR part 42;

(5) Perform the MSP Program contract in accordance with prudent business practices, as described in paragraph (c) of this section; and

(6) Not perform the MSP Program contract in accordance with poor business practices, as described in paragraph (d) of this section.

(c) *Prudent business practices.* OPM will consider an MSP issuer's specific circumstances and facts in using its discretion to determine compliance with paragraph (b)(5) of this section. For purposes of paragraph (b)(5) of this section, prudent business practices include, but are not limited to, the following:

(1) Timely compliance with OPM instructions and directives;

(2) Legal and ethical business and health care practices;

(3) Compliance with the terms of the MSP Program contract, regulations, and statutes;

(4) Timely and accurate adjudication of claims or rendering of medical services;



(5) Operating a system for accounting for costs incurred under the MSP Program contract, which includes segregating and pricing MSP option medical utilization and allocating indirect and administrative costs in a reasonable and equitable manner;

(6) Maintaining accurate accounting reports of costs incurred in the administration of the MSP Program contract;

(7) Applying performance standards for assuring contract quality as outlined at § 800.402; and

(8) Establishing and maintaining a system of internal controls that provides reasonable assurance that:

(i) The provision and payments of benefits and other expenses comply with legal, regulatory, and contractual guidelines;

(ii) MSP funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and

(iii) Data is accurately and fairly disclosed in all reports required by OPM.

(d) *Poor business practices.* OPM will consider an MSP issuer's specific circumstances and facts in using its discretion to determine compliance with paragraph (b)(6) of this section. For purposes of paragraph (b)(6) of this section, poor business practices include, but are not limited to, the following:

(1) Using fraudulent or unethical business or health care practices or otherwise displaying a lack of business integrity or honesty;

(2) Repeatedly or knowingly providing false or misleading information in the rate setting process;

(3) Failing to comply with OPM instructions and directives;

(4) Having an accounting system that is incapable of separately accounting for costs incurred under the contract and/or that lacks the internal controls necessary to fulfill the terms of the contract;

(5) Failing to ensure that the MSP issuer properly pays or denies claims, or, if applicable, provides medical services that are inconsistent with standards of good medical practice; and

(6) Entering into contracts or employment agreements with providers, provider groups, or health care workers that include provisions or financial incentives that directly or indirectly create an inducement to limit or restrict communication about medically necessary services to any individual covered under the MSP Program. Financial incentives are defined as bonuses, withholds, commissions, profit sharing or other similar adjustments to basic compensation (e.g., service fee,

capitation, salary) which have the effect of limiting or reducing communication about appropriate medically necessary services.

(e) *Performance escrow account.* OPM may require MSP issuers to pay an assessment into an escrow account to ensure contract compliance and benefit MSP enrollees.

#### § 800.402 Contract quality assurance.

(a) *General.* This section prescribes general policies and procedures to ensure that services acquired under MSP Program contracts conform to the contract's quality requirements.

(b) *Internal controls.* OPM may periodically evaluate the contractor's system of internal controls under the quality assurance program required by the contract and will acknowledge in writing if the system is inconsistent with the requirements set forth in the contract. OPM's reviews do not diminish the contractor's obligation to implement and maintain an effective and efficient system to apply the internal controls.

(c) *Performance standards.* (1) OPM will issue specific performance standards for MSP Program contracts and will inform MSP issuers of the applicable performance standards prior to negotiations for the contract year. OPM may benchmark its standards against standards generally accepted in the insurance industry. OPM may authorize nationally recognized standards to be used to fulfill this requirement.

(2) MSP issuers must comply with the performance standards issued pursuant to this section.

#### § 800.403 Fraud and abuse.

(a) *Program required.* An MSP issuer must conduct a program to assess its vulnerability to fraud and abuse as well as to address such vulnerabilities.

(b) *Fraud detection system.* An MSP issuer must operate a system designed to detect and eliminate fraud and abuse by employees and subcontractors of the MSP issuer, by providers furnishing goods or services to MSP enrollees, and by MSP enrollees.

(c) *Submission of information.* An MSP issuer must provide to OPM such information or assistance as may be necessary for the agency to carry out the duties and responsibilities, including those of the Office of Inspector General as specified in sections 4 and 6 of the Inspector General Act of 1978 (5 U.S.C. App.). An MSP issuer must provide any requested information in the form, manner, and timeline prescribed by OPM.

#### § 800.404 Compliance actions.

(a) *Causes for OPM compliance actions.* The following constitute cause for OPM to impose a compliance action described in paragraph (b) of this section against an MSP issuer:

(1) Failure by the MSP issuer to meet the requirements set forth in § 800.401(a) and (b);

(2) An MSP issuer's sustained failure to perform the MSP Program contract in accordance with prudent business practices, as described in § 800.401(c);

(3) A pattern of poor conduct or evidence of poor business practices such as those described in § 800.401(d); or

(4) Such other violations of law or regulation as OPM may determine, including pursuant to its authority under §§ 800.102 and 800.114.

(b) *Compliance actions.* (1) OPM may impose a compliance action against an MSP issuer at any time during the contract term if it determines that the MSP issuer is not in compliance with applicable law, this part, or the terms of its contract with OPM.

(2) Compliance actions may include, but are not limited to:

(i) Establishment and implementation of a corrective action plan;

(ii) Imposition of intermediate sanctions, such as suspension of marketing;

(iii) Performance incentives;

(iv) Reduction of service area or areas;

(v) Withdrawal of the certification of the MSP option or options offered on one or more Exchanges;

(vi) Nonrenewal of participation

(vii) Nonrenewal of contract; and

(viii) Withdrawal of approval or termination of the MSP Program contract.

(c) *Notice of compliance action.* (1) OPM must notify an MSP issuer in writing of a compliance action under this section. Such notice must indicate the specific compliance action undertaken and the reason for the compliance action.

(2) For compliance actions listed in § 800.404(b)(2)(v) through (viii), such notice must include a statement that the MSP issuer is entitled to request a reconsideration of OPM's determination to impose a compliance action pursuant to § 800.405.

(3) Upon imposition of a compliance action listed in paragraphs (b)(2)(iv) through (vii) of this section, OPM must notify the State Insurance Commissioner(s) and Exchange officials in the State or States in which the compliance action is effective.

(d) *Notice to enrollees.* If the contract is terminated, if OPM withdraws certification of an MSP option, or if a

State-level issuer's participation in the MSP Program contract is not renewed, as described in §§ 800.306 and 800.404(b)(2), or in any situation in which an MSP option is no longer available to enrollees, the MSP issuer must comply with any State or Exchange requirements regarding discontinuing a particular type of coverage that are applicable to a QHP offered on the Exchange on which the MSP option was offered, including a requirement to provide advance written notice before the coverage will be discontinued. If a State or Exchange does not have requirements about advance notice to enrollees, the MSP issuer must inform current MSP enrollees in writing of the discontinuance of the MSP option no later than 90 days prior to discontinuing the MSP option, unless OPM determines that there is good cause for less than 90 days' notice.

(e) *Definition.* As used in this subpart, "termination" means a decision by OPM to cancel an MSP Program contract prior to the end of its contract term. The term includes OPM's withdrawal of approval of an MSP Program contract.

#### § 800.405 Reconsideration of compliance actions.

(a) *Right to request reconsideration.* An MSP issuer may request that OPM reconsider a determination to impose one of the following compliance actions:

- (1) Withdrawal of the certification of the MSP option or options offered on one or more Exchanges;
- (2) Nonrenewal of participation
- (3) Nonrenewal of contract; or
- (4) Termination of the MSP Program contract.

(b) *Request for reconsideration and/or hearing.* (1) An MSP issuer with a right to request reconsideration specified in paragraph (a) of this section may request a hearing in which OPM will reconsider its determination to impose a compliance action.

(2) A request under this section must be in writing and contain contact information, including the name, telephone number, email address, and mailing address of the person or persons whom OPM may contact regarding a request for a hearing with respect to the reconsideration. The request must be in such form, contain such information, and be submitted in such manner as OPM may prescribe.

(3) The request must be received by OPM within 15 calendar days after the date of the MSP issuer's receipt of the notice of compliance action. The MSP issuer may request that OPM's reconsideration allow a representative

of the MSP issuer to appear personally before OPM.

(4) A request under this section must include a detailed statement of the reasons that the MSP issuer disagrees with OPM's imposition of the compliance action, and may include any additional information that will assist OPM in rendering a final decision under this section.

(5) OPM may obtain additional information relevant to the request from any source as it may, in its judgment, deem necessary. OPM will provide the MSP issuer with a copy of any additional information it obtains and provide an opportunity for the MSP issuer to respond (including by submitting additional information or explanation).

(6) OPM's reconsideration and hearing, if requested, may be conducted by the Director or a representative designated by the Director who did not participate in the initial decision that is the subject of the request for review.

(c) *Notice of final decision.* OPM will notify the MSP issuer, in writing, of OPM's final decision on the MSP issuer's request for reconsideration and the specific reasons for that final decision. OPM's written decision will constitute final agency action that is subject to review under the Administrative Procedure Act in the appropriate U.S. district court. Such review is limited to the record that was before OPM when it made its decision.

### Subpart F—Appeals by Enrollees of Denials of Claims for Payment or Service

#### § 800.501 General requirements.

(a) *Definitions.* For purposes of this subpart:

(1) *Adverse benefit determination* has the meaning given that term in 45 CFR 147.136(a)(2)(i).

(2) *Claim* means a request for:  
(i) Payment of a health-related bill; or  
(ii) Provision of a health-related service or supply.

(b) *Applicability.* This subpart applies to enrollees and to other individuals or entities who are acting on behalf of an enrollee and who have the enrollee's specific written consent to pursue a remedy of an adverse benefit determination.

#### § 800.502 MSP issuer internal claims and appeals.

(a) *Processes.* MSP issuers must comply with the internal claims and appeals processes applicable to group health plans and health insurance issuers under 45 CFR 147.136(b).

(b) *Timeframes and notice of determination.* An MSP issuer must

provide written notice to an enrollee of its determination on a claim brought under paragraph (a) of this section according to the timeframes and notification rules under 45 CFR 147.136(b) and (e), including the timeframes for urgent claims. If the MSP issuer denies a claim (or a portion of the claim), the enrollee may appeal the adverse benefit determination to the MSP issuer in accordance with 45 CFR 147.136(b).

#### § 800.503 External review.

(a) *External review by OPM.* OPM will conduct external review of adverse benefit determinations using a process similar to OPM review of disputed claims under 5 CFR 890.105(e), subject to the standards and timeframes set forth in 45 CFR 147.136(d).

(b) *Notice.* Notices to MSP enrollees regarding external review under paragraph (a) of this section must comply with 45 CFR 147.136(e), and are subject to review and approval by OPM.

(c) *Issuer obligation.* An MSP issuer must pay a claim or provide a health-related service or supply pursuant to OPM's final decision or the final decision of an independent review organization without delay, regardless of whether the plan or issuer intends to seek judicial review of the external review decision and unless or until there is a judicial decision otherwise.

#### § 800.504 Judicial review.

(a) OPM's written decision under the external review process established under § 800.503(a) of this part will constitute final agency action that is subject to review under the Administrative Procedure Act in the appropriate U.S. district court. A decision made by an independent review organization under the process established under § 800.503(a) is not within OPM's discretion and therefore is not final agency action.

(b) Judicial review under paragraph (a) of this section is limited to the record that was before OPM when OPM made its decision.

### Subpart G—Miscellaneous

#### § 800.601 Reservation of authority.

OPM reserves the right to implement and supplement these regulations with written operational guidelines.

#### § 800.602 Consumer choice with respect to certain services.

(a) *Assured availability of varied coverage.* Consistent with § 800.104 of this part, OPM will ensure that at least one of the MSP issuers on each Exchange in each State offers at least one MSP option that does not provide

coverage of services described in section 1303(b)(1)(B)(i) of the Affordable Care Act.

(b) *State opt-out.* An MSP issuer may not offer abortion coverage in any State where such coverage of abortion services is prohibited by State law.

(c) *Notice to Enrollees—(1) Notice of exclusion.* The MSP issuer must provide notice to consumers prior to enrollment that non-accepted abortion services are not a covered benefit in the form, manner, and timeline prescribed by OPM.

(2) *Notice of coverage.* If an MSP issuer chooses to offer an MSP option that covers non-accepted abortion services, in addition to an MSP option that does not cover non-accepted abortion services, the MSP issuer must provide notice to consumers prior to enrollment that non-accepted abortion services are a covered benefit. An MSP issuer must provide notice in a manner consistent with 45 CFR 147.200(a)(3), to meet the requirements of 45 CFR 156.280(f). OPM may provide guidance on the form, manner, and timeline for this notice.

(3) *OPM review and approval of notices.* OPM may require an MSP issuer to submit to OPM such notices. OPM reserves the right to review and approve these consumer notices to ensure that an MSP issuer complies with Federal and State laws, and the standards prescribed by OPM with respect to § 800.602.

#### **§ 800.603 Disclosure of information**

(a) *Disclosure to certain entities.* OPM may provide information relating to the activities of MSP issuers or State-level issuers to a State Insurance Commissioner or Director of a State-based Exchange.

(b) *Conditions of when to disclose.* OPM shall only make a disclosure described in this section to the extent that such disclosure is:

(1) Necessary or appropriate to permit OPM's Director, a State Insurance Commissioner, or Director of a State-based Exchange to administer and enforce laws applicable to an MSP issuer or State-level issuer over which it has jurisdiction, or

(2) Otherwise in the best interests of enrollees or potential enrollees in MSP options.

(c) *Confidentiality of information.* OPM will take appropriate steps to cause the recipient of this information to preserve the information as confidential.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 622**

[Docket No. 101206604-1758-02]

RIN 0648-XD731

#### **Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; 2015 Commercial Run-Around Gillnet Closure**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements an accountability measure (AM) through this temporary rule for commercial harvest of king mackerel in the Florida west coast southern subzone of the eastern zone of the Gulf of Mexico (Gulf exclusive economic zone (EEZ) using run-around gillnet gear. NMFS has determined that the commercial annual catch limit (ACL; commercial quota) for king mackerel using run-around gillnet gear in the Florida west coast southern subzone of the Gulf EEZ will be reached on February 20, 2015. Therefore, NMFS closes the Florida west coast southern subzone to commercial king mackerel fishing using run-around gillnet gear in the Gulf EEZ. This closure is necessary to protect the Gulf king mackerel resource.

**DATES:** The closure is effective 12:01 p.m., eastern standard time, February 20, 2015, until 6 a.m., eastern standard time, January 19, 2016.

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, NMFS Southeast Regional Office, telephone: 727-824-5305, email: [susan.gerhart@noaa.gov](mailto:susan.gerhart@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Gulf migratory group king mackerel's Florida west coast subzone of the Gulf

eastern zone is divided into northern and southern subzones, each with separate commercial quotas. From November 1 through March 31, the southern subzone encompasses an area of the EEZ south of a line extending due west of the Lee and Collier County, FL, boundary on the Florida west coast, and south of a line extending due east of the Monroe and Miami-Dade County, FL, boundary on the Florida east coast, which includes the EEZ off Collier and Monroe Counties, FL. From April 1 through October 31, the southern subzone is reduced to the EEZ off Collier County, and the EEZ off Monroe County becomes part of the Atlantic migratory group area (50 CFR 622.384(b)(1)(i)(C)).

On January 30, 2012 (76 FR 82058, December 29, 2011), NMFS implemented a commercial quota for the Gulf migratory group king mackerel in the Florida west coast southern subzone of 551,448 lb (250,133 kg) for vessels using run-around gillnet gear (50 CFR 622.384(b)(1)(i)(B)(1)), for the current fishing year, July 1, 2014, through June 30, 2015.

Regulations at 50 CFR 622.8(b) require NMFS to close any segment of the king mackerel commercial sector when its quota has been reached, or is projected to be reached, by filing a notification with the Office of the Federal Register. NMFS has determined that the commercial quota of 551,448 lb (250,133 kg) for Gulf group king mackerel for vessels using run-around gillnet gear in the Florida west coast southern subzone will be reached on February 20, 2015. Accordingly, commercial fishing using such gear in the Florida west coast southern subzone is closed at 12:01 p.m., eastern standard time, February 20, 2015, until 6 a.m., eastern standard time, January 19, 2016, the beginning of the next fishing season, *i.e.*, the day after the 2016 Martin Luther King, Jr. Federal holiday. Accordingly, the operator of a vessel that has been issued a Federal commercial permit to harvest Gulf migratory group king mackerel using run-around gillnet gear in the Florida west coast southern subzone must have landed ashore and bartered, traded, or sold such king mackerel prior to 12:01 p.m., eastern standard time, February 20, 2015.

Persons aboard a vessel for which a commercial permit for king mackerel has been issued, except persons who also possess a king mackerel gillnet permit, may fish for or retain Gulf group king mackerel harvested using hook-and-line gear in the Florida west coast southern subzone unless the commercial quota for hook-and-line gear has been met and the hook-and-line

segment of the commercial sector has been closed. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.382(a)(1)(ii) and (a)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel harvested using run-around gillnet gear in the Florida west coast southern subzone may not be purchased or sold. This prohibition does not apply to king mackerel harvested using run-around gillnet gear in the Florida west coast southern subzone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

#### Classification

The Regional Administrator, Southeast Region, NMFS, has

determined this temporary rule is necessary for the conservation and management of Gulf migratory group king mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.8(b) and 622.388(a)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because prior notice and opportunity for public comment on this temporary rule is unnecessary and contrary to the public interest. Such procedures are unnecessary, because the rule implementing the ACL (quota) and the associated requirement for closure of the

commercial harvest when the ACL (quota) is reached or projected to be reached has already been subject to notice and comment, and all that remains is to notify the public of the closure. They are contrary to the public interest, because any delay in the closure of the commercial harvest could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the king mackerel resource, because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment on this action would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

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

Dated: February 19, 2015.

**Jennifer M. Wallace,**

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

[FR Doc. 2015-03738 Filed 2-19-15; 4:15 pm]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 80, No. 36

Tuesday, February 24, 2015

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 TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2015-0246; Directorate Identifier 2014-NM-187-AD]

RIN 2120-AA64

#### Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737-300, -400, and -500 series airplanes. This proposed AD was prompted by reports of fatigue cracking found at the left-side and right-side upper frame, at a certain area. This proposed AD would require repetitive medium frequency eddy current (MFEC) inspections for cracking of the left-side and right-side upper frame, and repair (including open hole high frequency eddy current (HFEC) inspections for cracking of fastener holes) if necessary. This proposed AD also provides an optional preventative modification which would terminate the repetitive inspections at the modified location. We are proposing this AD to detect and correct fatigue cracking, which if not corrected, can grow in size and result in a severed frame, which could lead to rapid decompression and reduced structural integrity of the airplane.

**DATES:** We must receive comments on this proposed AD by April 10, 2015.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-

30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-0246.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-0246; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6447; fax: 425-917-6590; email: [wayne.lockett@faa.gov](mailto:wayne.lockett@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2015-0246; Directorate Identifier 2014-NM-187-AD" at the beginning of your comments. We specifically invite

comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

#### Discussion

We received reports of fatigue cracking found at frame station 360 between stringer 13 and stringer 14. At the time of crack detection, the airplanes had accumulated between 37,826 to 42,986 total flight cycles. The reported cracks ranged from 0.35 inches to 1.5 inches in length. Cracking of the left-side or right-side upper frame at station 360 between stringer 13 and stringer 14, if not corrected, can grow in size and result in a severed frame, which could lead to rapid decompression and reduced structural integrity of the airplane.

#### Related Service Information Under 14 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737-53A1339, dated August 12, 2014. This service information describes procedures for inspections for cracking of the left-side and right-side upper frame, at station 360 between stringer 13 and stringer 14; repair, and optional preventative modification. For information on the procedures and compliance times, see this service information. This service information is reasonably available; see **ADDRESSES** for ways to access this service information.

#### FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

#### Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between This Proposed AD and the Service Information."

**Explanation of “RC” Steps in Service Information**

The FAA worked in conjunction with industry, under the Airworthiness Directives Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner’s/operator’s understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The steps identified as RC (required for compliance) in any service information identified previously have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

Steps that are identified as RC in any service information must be done to comply with the proposed AD. However, steps that are not identified as RC are recommended. Those steps that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an alternative method of compliance (AMOC), provided the steps identified as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps identified as RC will require approval of an AMOC.

**Differences Between This Proposed AD and the Service Information**

Boeing Alert Service Bulletin 737–53A1339, dated August 12, 2014,

specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

**Costs of Compliance**

We estimate that this proposed AD affects 109 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections .....	14 work-hours × \$85 per hour = \$1,190 per inspection cycle.	\$0	\$1,190 per inspection cycle.	\$129,710 per inspection cycle.
Preventative modification (optional) .....	15 work-hours × \$85 per hour = \$1,275 per inspection cycle.	\$0	\$1,275 per inspection cycle.	\$138,975 per inspection cycle.

We estimate the following costs to do any necessary on-condition actions that

would be required based on the results of the proposed inspection. We have no

way of determining the number of aircraft that might need these actions:

**ON-CONDITION COSTS**

Action	Labor cost	Parts cost	Cost per product
Repair and open hole HFEC inspection .....	36 work-hours × \$85 per hour = \$3,060 .....	\$0	\$3,060

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

*For the reasons discussed above, I certify this proposed regulation:*

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

- 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**The Boeing Company:** Docket No. FAA–2015–0246; Directorate Identifier 2014–NM–187–AD.

**(a) Comments Due Date**

We must receive comments by April 10, 2015.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 737–300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1339, dated August 12, 2014.

**(d) Subject**

Air Transport Association (ATA) of America Code 53: Fuselage.

**(e) Unsafe Condition**

This AD was prompted by reports of fatigue cracking found at the left-side and right-side upper frame, at station 360 between stringer 13 and stringer 14. We are issuing this AD to detect and correct fatigue cracking of the left-side and right-side upper frame at station 360 between stringer 13 and stringer 14, which if not corrected, can grow in size and result in a severed frame, which could lead to rapid decompression and reduced structural integrity of the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Repetitive Inspections for Cracking**

At the applicable times specified in table 1 of paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 737–53A1339, dated August 12, 2014, except as required by paragraph (i)(2) of this AD: Do a medium frequency eddy current (MFEC) inspection for cracking on the left-side and right-side of the upper frame at Station 360 between stringer 13 and stringer 14, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1339, dated August 12, 2014. If no cracking is found, repeat the inspections at the applicable times specified in Table 1 of paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 737–53A1339, dated August 12, 2014. Accomplishment of the actions specified in paragraph (j) of this AD terminates the repetitive inspections required by this paragraph at the modified area only.

**(h) Repair**

If any cracking is found during any inspection required by paragraph (g) of this AD: Before further flight, repair the cracking including doing an open hole high frequency eddy current (HFEC) inspection for cracking of the holes, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1339, dated August 12, 2014, except as required by paragraph (i)(1) of this AD. Repair of any crack terminates the repetitive inspection requirements of paragraph (g) of this AD for the repaired area only. If any cracking is found during any inspection required by this

paragraph, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

**(i) Exceptions to the Service Information**

(1) Where Boeing Alert Service Bulletin 737–53A1339, dated August 12, 2014, specifies contacting Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(2) Where Boeing Alert Service Bulletin 737–53A1339, dated August 12, 2014, specifies a compliance time “after the original issue date of this service bulletin,” this AD requires compliance within the specified time after the effective date of this AD.

**(j) Optional Preventative Modification**

Modification of an inspection area specified in paragraph (g) of this AD, including doing open hole and surface HFEC inspections for cracking of the area to be modified, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1339, dated August 12, 2014, except as required by paragraph (i)(1) of this AD, terminates the repetitive inspections required by paragraph (g) of this AD at the modified location only.

**(k) Post-Repair and Post-Modification Inspections**

The post-repair and post-modification inspections specified in Tables 4 and 5 of paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 737–53A1339, dated August 12, 2014, are not required by this AD.

Note 1 to paragraph (k) of this AD: The post-repair and post-modification inspections specified in Tables 4 and 5 of paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 737–53A1339, dated August 12, 2014, may be used in support of compliance with section 121.1109(c)(2) or 129.109(b)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(b)(2)).

**(l) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (m)(1) of this AD. Information may be emailed to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto:9-ANM-Seattle-ACO-AMOC-Requests@faa.gov).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair

method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (i)(1) of this AD: If any service information contains steps that are identified as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not identified as RC are recommended. Those steps that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the steps identified as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps identified as RC require approval of an AMOC.

**(m) Related Information**

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: [wayne.lockett@faa.gov](mailto:wayne.lockett@faa.gov).

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 11, 2015.

**Jeffrey E. Duven,**

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

[FR Doc. 2015–03677 Filed 2–23–15; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 251**

[Docket ID: DOD–2014–OS–0058]

**RIN 0790–AJ28**

**National Language Service Corps (NLSC)**

**AGENCY:** Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This rule establishes in the Code of Federal Regulations the National Language Services Corps (NLSC) by describing the program and its responsibilities per the January 2013 National Defense Authorization Act which authorized the Secretary of Defense to establish the NLSC as a

permanent organization. The NLSC responds to federal agencies' needs for language skills in emergencies or surge requirements. Once a federal agency identifies a need, NLSC members are advised of the potential assignment. If an individual is interested and available, they go through a screening and selection process as discussed in the rule. The decision to use NLSC rests with the requesting agency and support agreements must be established before work can begin.

**DATES:** Comments must be received by April 27, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria VA 22350-3100.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** John Demboski, 571-256-0654.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

**I. Purpose of the Regulatory Action**

a. Purpose. NLSC may support DoD or other U.S. departments or agencies, in need of foreign language services, with requirements of less than 1 year. The NLSC will provide capable, federally-hired individuals to rapidly respond to critical national needs and assist DoD and other U.S. departments and agencies with surge or emergency requirements.

b. Succinct statement of legal authority for the regulatory action.

Authority: Applicable authorities include: 5 U.S.C. 3109 which authorizes the employment of experts and consultants on a temporary or intermittent basis; 18 U.S.C. 202 which defines "special Government employee;" 31 U.S.C. 1535 which authorizes the head of an agency or major organizational unit within an agency to place an order with a major

organizational unit within the same agency or another agency for services; 50 U.S.C. 1913 which authorized the Secretary of Defense to establish and maintain the National Language Service Corps.

**II. Summary of the Major Provisions of the Regulatory Action in Question**

The major provisions of this regulatory action include:

- a. Outlining NLSC membership criteria, member recruitment, appointment, and activation.
- b. Describing eligibility requirements for federal employees to participate in NLSC.

**III. Costs and Benefits**

The Department of Defense and other federal departments and agencies have benefited from NLSC support utilizing high-level language skills of members not otherwise available to meet their organizations' short-term, immediate needs. The NLSC has established a means to access and maintain contact with citizens who are highly skilled in foreign languages. Since initial efforts in fiscal year 2007, the average annual cost to build, pilot and fully operationalize the NLSC has been \$6.3 million. Current membership includes more than 5,000 members with skills in 315 foreign languages and dialects ready to serve national needs when called upon. Members hired to support missions have included the self-employed, retirees or students just entering the workforce, who proudly want to serve their nation. NLSC provides an opportunity to earn wages using their high-level language skills. As of June 2014, NLSC members have provided more than 28,000 hours of highly skilled foreign language support to 34 federal agencies and departments and their components.

**SUPPLEMENTARY INFORMATION:**

**Background**

In 2003, Congress tasked the Defense Language and National Security Education Office (DLNSEO), then known as the National Security Education Program (NSEP), with exploring the feasibility of establishing an organization of Americans with skills in critical languages that would serve in times of emergency or national need. NSEP prepared a feasibility study and follow-up planning that led to Congressional action in 2006. In the 2007 National Defense Authorization Act, the U.S. Congress included language directing the Secretary of Defense to initiate a pilot program that established a Civilian Linguist Reserve

Corps. The government has since renamed that organization as the NLSC.

In January 2013, President Barack Obama signed the National Defense Authorization Act which authorized the Secretary of Defense to establish the NLSC as a permanent organization. The NLSC operates under this authority with DLNSEO as its parent agency. DLNSEO provides strategic direction and programmatic oversight to the Military Departments, Defense field activities and the Combatant Commands on present and future requirements related to language, regional expertise, and culture.

The NLSC does not offer permanent full-time or part-time jobs. The NLSC responds to federal agencies' needs for language skills in emergencies or surge requirements. For this reason, the NLSC does not maintain any postings or offer any job location services. Once a federal agency identifies a need, NLSC members are advised of the potential assignment. If an individual is interested and available, they go through a screening and selection process as discussed in this rule. The decision to use NLSC rests with the requesting agency and support agreements must be established before support can begin.

The NLSC's charter is to provide short-term surge capability or to fill short term recurrent support that other existing capabilities cannot reasonably fill. Members have filled requirements that range from 15 minutes on the phone to 60 days in the field. If needed/desired, it is possible for members to provide recurrent, short term support, such as for periodic exercises for up to approximately six months (130 work days or 1,040 hours, whichever comes first) in the member's service year.

The NLSC uses the Federal Interagency Language Roundtable Proficiency Guidelines (<http://govtilr.org/Skills/ILRscale1.htm>) (the "ILR Scale") in speaking, reading, and listening as a basis for determining eligibility for Membership. The NLSC's goal is 3/3/3 proficiency (speaking/reading/listening) in at least one foreign language and in English.

Initial non-English language proficiency is assessed by asking all NLSC applicants to complete a series of self-assessments to provide an indication of where they fall on the ILR scale. Members of the NLSC will normally undergo formal proficiency testing to verify the self-assessments prior to participating in an assignment. Several factors may require formal proficiency testing, including the need for the NLSC and requesting agencies to



have formally-tested members available for assignments.

Initial English language assessment will not normally be conducted for applicants who graduated from an accredited high school and spent at least three years in the US while attending high school. If an individual did not do so, he or she may be asked to undergo the same self-assessment process as for non-English language skills. Finally, a number of members may be asked to undergo formal proficiency testing in English.

### Regulatory Procedures

*Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"*

Executive Orders 13563 and 12866 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, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

*Sec. 202, Pub. L. 104-4, "Unfunded Mandates Reform Act"*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This document will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

*Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)*

The Department of Defense certifies that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended,

does not require us to prepare a regulatory flexibility analysis.

*Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)*

Section 251.6(c)(1)-(c)(3) of this proposed rule contain information collection requirements. DoD has submitted the following proposal to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Type of Request: Reinstatement.

*Existing OMB Control Number: 0704-0449, "National Language Service Corps."*

*Title: DD Form 2932, "National Language Service Corps Application"*

*Number of Respondents: 1,500.*

*Responses per Respondent: 1.*

*Annual Responses: 1,500.*

*Average Burden per Response: 18 minutes.*

*Annual Burden Hours: 450 hours.*

*Needs and Uses: Verification and mission-related use.*

*Title: DD Form 2933, "National Language Service Corps (NLSC) Detailed Skills Self-Assessment"*

*Number of Respondents: 1,000.*

*Responses per Respondent: 1.*

*Annual Responses: 1,000.*

*Average Burden per Response: 18 minutes.*

*Annual Burden Hours: 300 hours.*

*Needs and Uses: Verification and mission-related use.*

*Title: DD Form 2934, "National Language Service Corps (NLSC) Global Skills Self-Assessment"*

*Number of Respondents: 1,000.*

*Responses per Respondent: 1.*

*Annual Responses: 1,000.*

*Average Burden per Response: 18 minutes.*

*Annual Burden Hours: 300 hours.*

*Needs and Uses: Verification and mission-related use.*

*Title: Phone call to review responses on forms*

*Total annual respondents: 1,000.*

*Frequency of response: 1.*

*Total annual responses: 1,000.*

*Burden per response: 10 minutes.*

*Total burden hours: 167 hours.*

*Needs and Uses: Verification and mission-related use.*

OMB Desk Officer: 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, with a copy to the National Language Service Corps, P.O. Box 12221, Arlington, VA 22219. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

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.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to John Demboski, National Language Service Corps, P.O. Box 12221, Arlington, VA 22219; phone number (703) 588-0868.

*Executive Order 13132, "Federalism"*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule will not have a substantial effect on State and local governments.

### List of Subjects in 32 CFR Part 251

Foreign languages, Manpower training programs.

Accordingly 32 CFR part 251 is proposed to be added to read as follows:

### PART 251—NATIONAL LANGUAGE SERVICE CORPS (NLSC)

Sec.

- 251.1 Purpose.
- 251.2 Applicability.
- 251.3 Definitions.
- 251.4 Policy.
- 251.5 Responsibilities.
- 251.6 Procedures.

**Authority:** 5 U.S.C. 3109, 18 U.S.C. 202, 31 U.S.C. 1535, 50 U.S.C. 1913.

#### § 251.1 Purpose.

This part:

(a) Implements the responsibilities of the Secretary of Defense in 50 U.S.C. 1913 by establishing the NLSC program.

(b) Establishes policy, assigns responsibilities, and provides procedures for the management of the NLSC program.

(c) Assigns responsibility to the National Security Education Board (NSEB) to oversee and coordinate the activities of the NLSC (as provided and determined by the Secretary of Defense pursuant to 50 U.S.C. 1903 and 1913 with policy and funding oversight provided by the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) in accordance with DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))" (available at <http://www.dtic.mil/whs/directives/corres/pdf/512402p.pdf>).

#### § 251.2 Applicability.

This part applies to Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the DoD (referred to collectively in this part as "the DoD Components") and Federal agencies.

#### § 251.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purposes of this part.

*Consultant.* Defined in 5 CFR part 304.

*Excepted service.* Appointments in the excepted service are civil service appointments within the Federal Government that do not confer competitive status and are excepted from competitive service by or pursuant to statute, by the President, or by the Office of Personnel Management, and which are not in Senior Executive Service.

*Foreign language.* Any language other than English.

*Language proficiency.* The U.S. Government relies on the Interagency Language Roundtable (ILR) scale to

determine language proficiency.

According to the ILR scale:

- (1) 0 is No Proficiency.
- (2) 0+ is Memorized Proficiency.
- (3) 1 is Elementary Proficiency.
- (4) 1+ is Elementary Proficiency, Plus.
- (5) 2 is Limited Working Proficiency.
- (6) 2+ is Limited Working Proficiency, Plus.

(7) 3 is General Professional Proficiency.

(8) 3+ is General Professional Proficiency, Plus.

(9) 4 is Advanced Professional Proficiency.

(10) 4+ is Advanced Professional Proficiency, Plus.

(11) 5 is Functional Native Proficiency.

*Special government employee (SGE).* Defined in 18 U.S.C. 202.

#### § 251.4 Policy.

It is DoD policy that:

(a) The NLSC provides DoD, or other U.S. departments or agencies, with U.S. citizens with high levels of foreign language proficiency for short-term temporary assignments providing foreign language services.

(b) The NLSC is authorized to employ U.S. citizens as language consultants pursuant to 50 U.S.C. 1913, 5 U.S.C. 3109, and 5 CFR part 304.

(c) The NLSC is exempt from DoD Instruction 5160.71, "DoD Language Testing Program" (available at [http://www.dtic.mil/whs/directives/corres/pdf/516071\\_2009\\_ch1.pdf](http://www.dtic.mil/whs/directives/corres/pdf/516071_2009_ch1.pdf)), such that the NLSC may use tests of the Defense Language Proficiency Testing System or may use and develop other tests to assess language proficiency for the purpose of employing NLSC members as language consultants.

(d) The NLSC will be available to support DoD or other U.S. departments or agencies pursuant to 50 U.S.C. 1913.

(e) The NLSC will:

(1) Collect personally identifiable information pursuant to 50 U.S.C. 1913 from individuals interested in applying for NLSC membership.

(2) Comply with DoD Instruction 8910.01, "Information Collection and Reporting" (available at <http://www.dtic.mil/whs/directives/corres/pdf/891001p.pdf>), Volume 2 of DoD Manual 8910.01, "DoD Information Collections Manual: Procedures for DoD Public Information Collections" (available at [http://www.dtic.mil/whs/directives/corres/pdf/891001m\\_vol2.pdf](http://www.dtic.mil/whs/directives/corres/pdf/891001m_vol2.pdf)), and 32 CFR part 310.

(f) Qualified and available members with requested language skills hired in accordance with 5 U.S.C. 3109 and 5 CFR part 304 and Administrative Instruction 2, "Employment of Experts

and Consultants" (available at <http://www.dtic.mil/whs/directives/corres/pdf/ai002p.pdf>) will be temporarily assigned to government agencies pursuant to reimbursable agreements described in 31 U.S.C. 1535.

#### § 251.5 Responsibilities.

(a) The USD(P&R):

(1) Provides overall policy guidance for carrying out the responsibilities and duties of the Secretary of Defense in accordance with DoD Directive 5124.02 and 50 U.S.C. 1913.

(2) Ensures appropriate resources are programmed for the administration and operation of the NLSC.

(b) Under the authority, direction, and control of the USD(P&R), the Assistant Secretary of Defense for Readiness and Force Management (ASD(R&FM)):

(1) Through the Deputy Assistant Secretary of Defense for Readiness:

(i) Develops processes and polices regarding the NLSC oversight and coordination by the NSEB in accordance with 50 U.S.C. 1903 and 1913.

(ii) Recommends and oversees the establishment and execution of policies, programs, and goals to ensure the NLSC supports the readiness of the Military Services.

(iii) Oversees, and monitors compliance with the NLSC programs and processes on behalf of the Secretary of Defense to include the procedures in § 251.6 of this part.

(iv) Ensures that functions needed to support the accomplishment of the NLSC mission are executed including engagement with DoD Components, federal agencies, and State and local governments, to identify language needs, assessment of language proficiency of its members, and skill sustainment training.

(v) Determines eligibility for NLSC membership.

(2) Hosts the annual program review identified in 50 U.S.C. 1913.

(3) Designates a program manager responsible for overseeing implementation of NLSC programs and processes.

(c) Under the authority, direction, and control of the USD (P&R), the Director, Department of Defense Human Resources Activity (DoDHRA):

(1) Implements procedures and instructions for the appointment of NLSC members in support of DoD or other U.S. departments or agencies.

(2) Authorizes and signs interagency agreements between the NLSC and organizations outside of the DoD, and delegates authority to sign such agreements as needed.

(3) Provides administrative support to the NLSC, including actions related to

intra- and inter-agency agreements, the intra- and inter-agency transfer of funds, personnel actions, and travel requirements.

(4) Provides fiscal management and oversight to ensure all funds provided for the NLSC are separately and visibly accounted for in the DoD budget.

(d) DoD Components heads ensure that the use of NLSC members is considered during exercise and operational planning.

#### **§ 251.6 Procedures.**

(a) *NLSC purpose.* (1) The purpose of the NLSC is to identify and provide U.S. citizens with foreign language skills to support DoD or other U.S. departments or agencies, in need of foreign language services, for requirements of less than 1 year.

(2) The NLSC will provide capable, federally-hired individuals to rapidly respond to critical national needs and assist DoD and other U.S. departments and agencies with surge or emergency requirements.

(b) *NLSC membership criteria.* NLSC members must:

(1) Be a U.S. citizen.

(2) Be at least 18 years of age.

(3) Have satisfied Selective Service requirements.

(4) Be proficient in English and any other language.

(c) *NLSC member recruitment.* The NLSC program manager will oversee recruitment of members. NLSC maintains a registry of individuals who have applied or been accepted for membership and responds to requests for foreign language services by searching the registry to identify individuals who can provide support. NLSC collects applicant information through electronically available DD forms (located at the DoD Forms Management Program Web site at <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>.) or comparable web-based applications:

(1) *DD Form 2932.* Contains a brief set of screening questions and is used to determine basic eligibility for NLSC membership.

(2) *DD Form 2933.* A language screening tool to evaluate the applicant's skills with respect to specific tasks. DD Form 2933 is used in conjunction with the screening of language skills for entry into the NLSC.

(3) *DD Form 2934.* Provides an overall assessment of the applicant's foreign language ability. DD Form 2934 is also used in conjunction with the screening of detailed skills for entry into the NLSC.

(d) *NLSC member appointment as Federal employees.* Where applicants

meet NLSC membership criteria and are matched to foreign language services requirements, the NLSC program manager ensures actions are initiated to temporarily hire applicants and members for forecasted and actual support requests.

(1) For Federal hiring, members follow excepted service hiring policies in accordance with 5 U.S.C. 3109, 5 CFR part 304, and 32 CFR part 310, and are appointed as language consultants in advance of participating in a support request, in accordance with AI 2.

(2) An NLSC member who is already employed by a U.S. Government agency or is under contract full-time to one agency must receive a release from the head of that agency or individual empowered to release the employee or contractor before being employed for service within the NLSC pursuant to 50 U.S.C. 1913 and must comply with applicable laws and regulations regarding compensation. Such requests will be coordinated by the NLSC with the department or agency head concerned.

(3) NLSC members will be appointed on an annual basis pursuant to 5 U.S.C. 3109, 5 CFR part 304, and 32 CFR part 310 to perform duties as language consultants. If serving less than 130 days in a consecutive 365 day period, they will be considered SGEs as defined in 18 U.S.C. 202. Concurrent appointments as an SGE may be held with other DoD Components or in another federal agency.

(4) The NLSC program manager will track the number of days each NLSC member performed services and the total amount paid to each NLSC member within the 365 day period after the NLSC member's appointment.

(e) *NLSC member activation.* Activation encompasses all aspects of matching and hiring NLSC members to perform short-term temporary assignments to provide foreign language services. Under NLSC program manager oversight:

(1) Customer requirements are matched with skills of NLSC members and support is requested from DoDHRA to process necessary agreements, funding documents, and personnel actions to provide foreign language services. In accordance with paragraph (d)(3) of this section, NLSC members are temporarily hired as DoD employees.

(2) NLSC members are prepared for activation. If members are to be mobilized out of their home area, travel order requests are initiated. During the assignment, action will be taken to coordinate with members and clients, and assess success with the requesting agency upon completion.

(3) If duty requires issuance of DoD identification (*e.g.*, Common Access Card), such identification will be issued to and maintained by activated NSLC members in accordance with Volume 1 of DoD Manual 1000.13, "DoD Identification (ID) Cards: ID Card Life-Cycle" (available at [http://www.dtic.mil/whs/directives/corres/pdf/100013\\_vol1.pdf](http://www.dtic.mil/whs/directives/corres/pdf/100013_vol1.pdf)). Upon completion of the assignment, the identification will be retrieved in accordance with Volume 1 of DoD Manual 1000.13.

(4) Upon completion of assignments, DoDHRA will provide post-assignment support to members and reconcile funding to close project orders.

Dated: February 18, 2015.

**Aaron Siegel,**

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

[FR Doc. 2015-03567 Filed 2-23-15; 8:45 am]

**BILLING CODE 5001-06-P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

**[Docket Number USCG-2014-0300]**

**RIN 1625-AA00**

#### **Safety Zones; Fireworks Displays in the Sector Columbia River Captain of the Port Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish twenty three new fireworks display safety zones at various locations in the Sector Columbia River Captain of the Port zone. The Coast Guard previously published a notice of proposed rulemaking with respect to this proposed rule on June 18, 2014. This supplemental notice of proposed rulemaking changes the proposed regulation in the following respects. First, the Coast Guard proposes to amend the regulatory text to clarify that the coordinates for all safety zones addressed by the proposed rule are approximate. Second, the Coast Guard proposes to make corrections to the location of nine existing and ten new fireworks events in the Sector Columbia River Captain of the Port zone. Third, the Coast Guard will be removing a duplicate entry of the Hood River 4th of July event.

**DATES:** Comments and related material must be received by the Coast Guard on or before March 26, 2015.

Requests for public meetings must be received by the Coast Guard on or before March 3, 2015.

**ADDRESSES:** You may submit comments identified by docket number USCG–2014–0300 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Sean Morrison, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email [msupdxwwm@uscg.mil](mailto:msupdxwwm@uscg.mil). If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Acronyms**

DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of Proposed Rulemaking  
SNPRM Supplemental Notice of Proposed Rulemaking

#### **A. Public Participation and Request for Comments**

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

##### *1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one

of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG–2014–0300] in the “SEARCH” box and click “SEARCH.” Click on “Submit a Comment” on the line associated with this rulemaking.

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

##### *2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> type the docket number [USCG–2014–0300] in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

##### *3. Privacy Act*

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

##### *4. Public Meeting*

We do not plan on holding a public meeting. But you may submit a request

for one on or before March 3, 2015, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### **B. Regulatory History and Information**

A Notice of Proposed Rulemaking (NPRM) entitled “Safety Zones; Fireworks Displays in the Sector Columbia River Captain of the Port Zone” was published in the **Federal Register** on June 18, 2014 with the comment period ending on July 18, 2014 (see 79 FR 34669). We did not receive any comments on the proposed rule and did not receive any requests for a public meeting. A public meeting was not held. While creating the final rule, we determined that additional language should be added to the regulation in order to clarify that the coordinates for the locations of the fireworks display safety zones are approximate. Additionally, we found inconsistencies in the coordinates provided in the published NPRM for nineteen of the fireworks displays. With this SNPRM we are proposing to amend these coordinates. The inconsistencies found were in relation to the location of the safety zones for the following fireworks events: Cinco de Mayo, Tri-City Chamber of Commerce, Cedco Inc., Florence Independence Day Celebration, Ilwaco July 4th Independence Day at the Port, East County 4th of July, City of St. Helens 4th of July, Hood River 4th of July, Rufus 4th of July, Maritime Heritage Festival, Lynch Picnic, July 4th Party at the Port of Gold Beach, Roseburg Hometown 4th of July, Newport 4th of July, The Mill Casino Independence Day, Westport 100th Anniversary, Westport 4th of July, The 4th of July at Pekin Ferry, and the Leukemia and Lymphoma Light the Night. Additionally, we found a duplicate entry for the Hood River 4th of July event.

#### **C. Basis and Purpose**

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

The proposed safety zones are being implemented to help ensure the safe navigation of maritime traffic in the Sector Columbia River Area of

Responsibility during fireworks displays. Fireworks displays create hazardous conditions for the maritime public because of the large number of vessels that congregate near the displays, as well as the noise, falling debris, and explosions that occur during the event. Because firework discharge sites can pose a hazard to the maritime public, these safety zones are necessary in order to restrict vessel movement and

reduce vessel congregation in the proximity of the firework discharge sites.

**D. Discussion of the Proposed Rule**

This SNPRM amends the regulatory language of the proposed rule to clarify that the coordinates contained in the published table are approximate locations. The language will specify that the proposed safety zones will encompass waters within a 450 yard

radius of the launch site at the approximate locations listed in the tables.

This SNPRM will also remove a duplicate entry of the Hood River 4th of July event.

Additionally, this SNPRM amends the positions of the following fireworks displays in the proposed rule in order to accurately reflect the approximate locations of the fireworks displays:

Event name (typically)	Event location	Date of event	Latitude	Longitude
Cinco de Mayo Fireworks Display .....	Portland, OR .....	One day in May .....	45°30'58" N .....	122°40'12" W.
Tri-City Chamber of Commerce Fireworks Display, Columbia Park.	Kennewick, WA .....	One day in July .....	46°13'37" N .....	119°08'47" W.
Cedco Inc. Fireworks Display .....	North Bend, OR .....	One day in July .....	43°23'42" N .....	124°12'55" W.
Florence Independence Day Celebration	Florence, OR .....	One day in July .....	43°58'09" N .....	124°05'50" W.
Ilwaco July 4th Committee Fireworks/ Independence Day at the Port.	Ilwaco, OR .....	One day in July .....	46°18'17" N .....	124°02'00" W.
East County 4th of July Fireworks .....	Gresham, OR .....	One day in July .....	45°33'32" N .....	122°27'10" W.
City of St. Helens 4th of July Fireworks Display.	St. Helens, OR .....	One day in July .....	45°51'54" N .....	122°47'26" W.
Hood River 4th of July .....	Hood River, OR .....	One day in July .....	45°42'58" N .....	121°30'32" W.
Rufus 4th of July Fireworks .....	Rufus, OR .....	One day in July .....	45°41'39" N .....	120°45'16" W.
Maritime Heritage Festival .....	St. Helens, OR .....	One day in July .....	45°51'54" N .....	122°47'26" W.
Lynch Picnic .....	West Linn, OR .....	One day in July .....	45°23'37" N .....	122°37'52" W.
July 4th Party at the Port of Gold Beach	Gold Beach, OR .....	One day in July .....	42°25'30" N .....	124°25'03" W.
Roseburg Hometown 4th of July .....	Roseburg, OR .....	One day in July .....	43°12'58" N .....	123°22'10" W.
Newport 4th of July .....	Newport, OR .....	One day in July .....	44°37'40" N .....	124°02'45" W.
The Mill Casino Independence Day .....	North Bend, OR .....	One day in July .....	43°23'42" N .....	124°12'55" W.
Westport 100th Anniversary .....	Westport, WA .....	One day in June .....	46°54'17" N .....	124°05'59" W.
Westport 4th of July .....	Westport, WA .....	One day in July .....	46°54'17" N .....	124°05'59" W.
The 4th of July at Pekin Ferry .....	Ridgefield, WA .....	One day in July .....	45°52'07" N .....	122°43'53" W.
Leukemia and Lymphoma Light the Night Fireworks Display.	Portland, OR .....	One day in October .....	45°31'14" N .....	122°40'06" W.

**1. Regulatory Planning and Review**

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard bases this finding on the fact that the safety zones listed will be in place for a limited period of time and are minimal in duration.

**2. Impact on Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

(1) This proposed rule may affect the following entities, some of which may

be small entities: the owners and operators of vessels intending to operate in the area covered by the safety zone.

The proposed rule will not have a significant economic impact on a substantial number of small entities because the safety zones will only be in effect for a limited period of time. Additionally, vessels can still transit through the zone with the permission of the Captain of the Port. Before the effective period, we will publish advisories in the Local Notice to Mariners available to users of the river. Maritime traffic will be able to schedule their transits around the safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

**3. Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

**4. Collection of Information**

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

**5. Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule

does not have implications for federalism.

6. *Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. *Unfunded Mandates Reform Act*

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

8. *Taking of Private Property*

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

9. *Civil Justice Reform*

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

10. *Protection of Children*

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from

Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. *Indian Tribal Governments*

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

12. *Energy Effects*

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

13. *Technical Standards*

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

14. *Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the amendment and

addition of safety zones in 33 CFR 165.1315. This proposed rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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

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

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

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

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

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

■ 2. Amend § 165.1315 to read as follows:

**§ 165.1315 Safety Zone; Annual Fireworks Displays Within the Sector Columbia River Captain of the Port Zone.**

(a) *Safety Zones.* The following areas are designated safety zones: Waters of the Columbia River and its tributaries, waters of the Siuslaw River, Yaquina River, and Umpqua River, and waters of the Washington and Oregon coasts, within a 450 yard radius of the launch site at the approximate locations listed in the following table:

Event name (typically)	Event location	Date of event	Latitude	Longitude
Cinco de Mayo Fireworks Display .....	Portland, OR .....	One day in May .....	45° 30'58" N .....	122° 40'12" W
Portland Rose Festival Fireworks Display.	Portland, OR .....	One day in May or June.	45° 30'58" N .....	122° 40'12" W
Tri-City Chamber of Commerce Fireworks Display, Columbia Park.	Kennewick, WA .....	One day in July .....	46° 13'37" N .....	119° 08'47" W
Cedco Inc. Fireworks Display .....	North Bend, OR .....	One day in July .....	43° 23'42" N .....	124° 12'55" W
Astoria-Warrenton 4th of July Fireworks	Astoria, OR .....	One day in July .....	46° 11'34" N .....	123° 49'28" W
Waterfront Blues Festival Fireworks .....	Portland, OR .....	One day in July .....	45° 30'42" N .....	122° 40'14" W
Oregon Symphony Concert Fireworks Display.	Portland, OR .....	One day in August or September.	45° 30'42" N .....	122° 40'14" W
Florence Independence Day Celebration	Florence, OR .....	One day in July .....	43° 58'09" N .....	124° 05'50" W
Oaks Park Association .....	Portland, OR .....	One day in July .....	45° 28'22" N .....	122° 39'59" W
City of Rainier/Rainier Days .....	Rainier, OR .....	One day in July .....	46° 05'46" N .....	122° 56'18" W
Ilwaco July 4th Committee Fireworks/Independence Day at the Port.	Ilwaco, OR .....	One day in July .....	46° 18'17" N .....	124° 02'00" W
Celebrate Milwaukie .....	Milwaukie, OR .....	One day in July .....	45° 26'33" N .....	122° 38'44" W

Event name (typically)	Event location	Date of event	Latitude	Longitude
Splash Aberdeen Waterfront Festival ....	Aberdeen, WA .....	One day in July .....	46° 58'40" N .....	123° 47'45" W
City of Coos Bay July 4th Celebration/ Fireworks Over the Bay.	Coos Bay, OR .....	One day in July .....	43° 22'06" N .....	124° 12'24" W
Arlington 4th of July .....	Arlington, OR .....	One day in July .....	45° 43'23" N .....	120° 12'11" W
East County 4th of July Fireworks .....	Gresham, OR .....	One day in July .....	45° 33'32" N .....	122° 27'10" W
Port of Cascade Locks 4th of July Fire- works Display.	Cascade Locks, OR ....	One day in July .....	45° 40'15" N .....	121° 53'43" W
Astoria Regatta .....	Astoria, OR .....	One day in August .....	46° 11'34" N .....	123° 49'28" W
Washougal 4th of July .....	Washougal, WA .....	One day in July .....	45° 34'32" N .....	122° 22'53" W
City of St. Helens 4th of July Fireworks Display.	St. Helens, OR .....	One day in July .....	45° 51'54" N .....	122° 47'26" W
Waverly Country Club 4th of July Fire- works Display.	Milwaukie, OR .....	One day in July .....	45° 27'03" N .....	122° 39'18" W
Booming Bay Fireworks .....	Westport, WA .....	One day in July .....	46° 54'14" N .....	124° 06'08" W
Hood River 4th of July .....	Hood River, OR .....	One day in July .....	45° 42'58" N .....	121° 30'32" W
Rufus 4th of July Fireworks .....	Rufus, OR .....	One day in July .....	45° 41'39" N .....	120° 45'16" W
Newport High School Graduation Fire- works Display.	Newport, OR .....	One day in June .....	44° 36'48" N .....	124° 04'10" W
Willamette Falls Heritage Festival .....	Oregon City, OR .....	One day in October ....	45° 21'44" N .....	122° 36'21" W
Winchester Bay 4th of July Fireworks Display.	Winchester Bay, OR ....	One day in July .....	43° 40'56" N .....	124° 11'13" W
Brookings, OR July 4th Fireworks Dis- play.	Brookings, OR .....	One day in July .....	42° 02'39" N .....	124° 16'14" W
Maritime Heritage Festival .....	St. Helens, OR .....	One day in July .....	45° 51'54" N .....	122° 47'26" W
Lynch Picnic .....	West Linn, OR .....	One day in July .....	45° 23'37" N .....	122° 37'52" W
Yachats 4th of July .....	Yachats, OR .....	One day in July .....	44° 18'38" N .....	124° 06'27" W
Lincoln City 4th of July .....	Lincoln City, OR .....	One day in July .....	44° 55'28" N .....	124° 01'31" W
July 4th Party at the Port of Gold Beach	Gold Beach, OR .....	One day in July .....	42° 25'30" N .....	124° 25'03" W
Gardiner 4th of July .....	Gardiner, OR .....	One day in July .....	43° 43'55" N .....	124° 06'48" W
Huntington 4th of July .....	Huntington, OR .....	One day in July .....	44° 18'02" N .....	117° 13'33" W
Toledo Summer Festival .....	Toledo, OR .....	One day in July .....	44° 37'08" N .....	123° 56'24" W
Port Orford 4th of July .....	Port Orford, OR .....	One day in July .....	42° 44'31" N .....	124° 29'30" W
The Dalles Area Chamber of Commerce Fourth of July.	The Dalles, OR .....	One day in July .....	45° 36'18" N .....	121° 10'23" W
Roseburg Hometown 4th of July .....	Roseburg, OR .....	One day in July .....	43° 12'58" N .....	123° 22'10" W
Newport 4th of July .....	Newport, OR .....	One day in July .....	44° 37'40" N .....	124° 02'45" W
First Friday Milwaukie .....	Milwaukie, OR .....	One day in September	45° 26'33" N .....	122° 38'44" W
The Mill Casino Independence Day .....	North Bend, OR .....	One day in July .....	43° 23'42" N .....	124° 12'55" W
Waldport 4th of July .....	Waldport, OR .....	One day in July .....	44° 25'31" N .....	124° 04'44" W
Westport 100th Anniversary .....	Westport, WA .....	One day in June .....	46° 54'17" N .....	124° 05'59" W
Westport 4th of July .....	Westport, WA .....	One day in July .....	46° 54'17" N .....	124° 05'59" W
The 4th of July at Pekin Ferry .....	Ridgefield, WA .....	One day in July .....	45° 52'07" N .....	122° 43'53" W
Leukemia and Lymphoma Light the Night Fireworks Display.	Portland, OR .....	One day in October ....	45° 31'14" N .....	122° 40'06" W

(b) *Special requirements.* Fireworks barges or launch sites on land used in locations stated in this rule shall display a sign. The sign will be affixed to the port and starboard side of the barge or mounted on a post 3 feet above ground level when on land and in close proximity to the shoreline facing the water labeled "FIREWORKS-DANGER-STAY AWAY." This will provide on-scene notice that the safety zone is, or will, be enforced on that day. This notice will consist of a diamond shaped sign, 4 foot by 4 foot, with a 3 inch orange retro-reflective border. The word "DANGER" shall be 10 inch black block letters centered on the sign with the words "FIREWORKS" and "STAY AWAY" in 6 inch black block letters placed above and below the word "DANGER" respectively on a white background. An on-scene patrol vessel

may enforce these safety zones at least 1 hour prior to the start and 1 hour after the conclusion of the fireworks display.

(c) *Notice of enforcement.* These safety zones will be activated, and thus subject to enforcement, under the following conditions: The Coast Guard must receive and approve a marine event permit for each fireworks display and then the Captain of the Port will cause notice of the enforcement of these safety zones to be made by all appropriate means to provide notice to the affected segments of the public as practicable, in accordance with 33 CFR 165.7(a). The Captain of the Port will issue a Local Notice to Mariners notifying the public of activation and suspension of enforcement of these safety zones. Additionally, an on-scene Patrol Commander may be appointed to enforce the safety zones by limiting the

transit of non-participating vessels in the designated areas described above.

(d) *Enforcement period.* This rule will be enforced at least one hour before and one hour after the duration of the event each day a barge or launch site with a "FIREWORKS-DANGER-STAY AWAY" sign is located within any of the above designated safety zone locations and meets the criteria established in paragraphs (a), (b), and (c).

(e) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative. The Captain of the Port

may be assisted by other Federal, State, or local agencies with the enforcement of the safety zone.

(f) *Authorization.* All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or Designated Representative by contacting either the on-scene patrol craft on VHF Ch 13 or Ch 16 or the Coast Guard Sector Columbia River Command Center via telephone at (503) 861-6211.

Dated: January 30, 2015.

**D.J. Travers,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Columbia River.*

[FR Doc. 2015-03607 Filed 2-23-15; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60, 61, and 63

[EPA-R06-OAR-2010-1054; FRL-9923-10-Region 6]

#### New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Louisiana

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

**ACTION:** Proposed rule.

**SUMMARY:** The Louisiana Department of Environmental Quality (LDEQ) has submitted updated regulations for receiving delegation of Environmental Protection Agency (EPA) authority for implementation and enforcement of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) for all sources (both part 70 and non-part 70 sources). The delegation of authority under this action does not apply to sources located in Indian Country. EPA is providing notice that it is updating the delegation of certain NSPS to LDEQ and taking direct final action to approve the delegation of certain NESHAPs to LDEQ.

**DATES:** Written comments on this proposed rule must be received on or before March 26, 2015.

**ADDRESSES:** Comments may be mailed to Mr. Rick Barrett, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Barrett, (214) 665-7227; email: [barrett.richard@epa.gov](mailto:barrett.richard@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving LDEQ's request for delegation of authority to implement and enforce certain NSPS and NESHAP for all sources (both part 70 and non-part 70 sources). LDEQ has adopted certain NSPS and NESHAP by reference into Louisiana's state regulations. In addition, EPA is waiving its notification requirements so sources will only need to send notifications and reports to LDEQ.

The EPA is taking direct final action without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the preamble to the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting must do so at this time. If EPA receives relevant adverse comment on an amendment, paragraph, or section of the rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: January 28, 2015.

**Samuel Coleman,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 2015-03731 Filed 2-23-15; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 61 and 63

[EPA-R06-OAR-2008-0063; FRL-9923-20-Region 6]

#### National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Oklahoma

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

**ACTION:** Proposed rule.

**SUMMARY:** The Oklahoma Department of Environmental Quality (ODEQ) has

submitted updated regulations for receiving delegation of Environmental Protection Agency (EPA) authority for implementation and enforcement of National Emission Standards for Hazardous Air Pollutants (NESHAP) for all sources (both part 70 and non-part 70 sources). The delegation of authority under this action does not apply to sources located in Indian Country. EPA is providing notice that it is taking direct final action to approve the delegation of certain NESHAPs to ODEQ.

**DATES:** Written comments on this proposed rule must be received on or before March 26, 2015.

**ADDRESSES:** Comments may be mailed to Mr. Rick Barrett, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Barrett, (214) 665-7227; email: [barrett.richard@epa.gov](mailto:barrett.richard@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving ODEQ's request for delegation of authority to implement and enforce certain NESHAP for all sources (both part 70 and non-part 70 sources). ODEQ has adopted certain NESHAPs by reference into Oklahoma's state regulations. In addition, EPA is waiving its notification requirements so sources will only need to send notifications and reports to ODEQ. The EPA is taking direct final action without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the preamble to the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting must do so at this time. If EPA receives relevant adverse comment on an amendment, paragraph, or section of the rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions



of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: February 6, 2015.

**Wren Stenger,**

Director, Multimedia Planning and Permitting Division, Region 6.

[FR Doc. 2015-03801 Filed 2-23-15; 8:45 am]

BILLING CODE 6560-50-P

**GENERAL SERVICES ADMINISTRATION**

**41 CFR Parts 101-25 and 102-32**

[FPMR Case 2014-101-1; FMR Case 2014-102-2; Docket No. 2014-0016; Sequence No. 1]

RIN 3090-AJ50

**Federal Property Management Regulations/Federal Management Regulation; Supply and Procurement**

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** GSA is proposing to amend the Federal Property Management Regulations (FPMR) and the Federal Management Regulation (FMR) by migrating regulations regarding the supply and procurement of Government personal property management from the FPMR to the FMR. The FPMR will contain a cross-reference to direct readers to the coverage in the FMR. This proposed rule also eliminates material that is not regulatory in nature, is overly prescriptive, outdated, addressed in other policy, or no longer appropriate

for today's Government business environment. This case is included in GSA's retrospective review of existing regulations under Executive Order 13563. Additional information is available at [www.gsa.gov/improvingregulations](http://www.gsa.gov/improvingregulations).

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before April 27, 2015 to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments in response to FPMR Case 2014-101-1/ FMR Case 2014-102-2 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking Portal by searching for "FPMR Case 2014-101-1/FMR Case 2014-102-2," and selecting the link that corresponds with "FPMR Case 2014-101-1/FMR Case 2014-102-2." Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FPMR Case 2014-101-1/ FMR Case 2014-102-2" on your attached document.
- *Fax:* 202-501-4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Hada Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FPMR Case 2014-101-1/FMR Case 2014-102-2, on all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Robert Holcombe, Office of Government-wide Policy, Office of Asset and Transportation Management (MA), at 202-501-3828. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVCB) at 202-501-4755. Please cite FPMR Case 2014-101-1/ FMR Case 2014-102-2.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

GSA is proposing to amend the FPMR by revising regulations regarding Government personal property management policies in FPMR 101-25 (41 CFR part 101-25), and by moving these policies to part 102-32 of the FMR (41 CFR part 102-32). GSA anticipates migrating the remaining parts of FPMR, Subchapter E, to succeeding subparts of FMR part 102-32. This revision is part of GSA's effort to improve its external directives system by reducing the number of regulations and rewriting them in plain language. This proposed rule removes material that is not regulatory in nature (such as internal GSA operating procedures), is overly prescriptive, outdated, addressed in other policy, or no longer appropriate for today's Government business environment.

**B. Substantive Changes**

The following table provides a crosswalk from FPMR part 101-25 (left column) to FMR part 102-32 (right column). This table identifies where the policy provisions of FPMR part 101-25 will be migrated to in the FMR, and explains significant changes or deletions.

Title 41: Public contracts and property management part 101-25—general	FMR part 102-32—supply and procurement
§ 101-25.000 Scope of subchapter .....	Revised and added to section 102-32.5.
§ 101-25.001 Scope of part .....	Deleted as not necessary.
§ 101-25.100 Use of Government personal property and nonpersonal services.	Revised in sections 102-32.20 and 102-32.25.
§ 101-25.101 Criteria for determining method of supply .....	Revised in section 102-32.35. Definition of "use point" removed and replaced with general terminology.
§ 101-25.102 Exchange or sale of personal property for replacement purposes.	Deleted because this topic is addressed in FMR part 102-39.
§ 101-25.103 Promotional materials, trading stamps, or bonus goods ...	Deleted. Items addressed in this Subpart are treated the same as other personal property and disposed of accordingly.
§ 101-25.104 Acquisition of office furniture and office machines .....	Deleted as being too prescriptive; refer to the Federal Acquisition Regulation (FAR) for general policies on acquisition. The prohibition against acquiring unnecessary items is retained in section 102-32.30.
§ 101-25.105 [Reserved] .....	Deleted.
§ 101-25.106 Servicing of office machines .....	Deleted as being too prescriptive.
§ 101-25.107 Guidelines for requisitioning and proper use of consumable or low cost items.	Policy summarized in section 102-32.45.
§ 101-25.108 Multiyear subscriptions for publications .....	Deleted, refer to the FAR for requirements determination and structuring a procurement.

Title 41: Public contracts and property management part 101–25—general	FMR part 102–32—supply and procurement
§ 101–25.109 Laboratory and research equipment .....	Policy summarized in section 102–32.40 and generalized to include all types of facilities and activities, not just laboratories and research facilities.
§ 101–25.110 Tire identification/registration program .....	Deleted. Federal motor vehicle policy is found in FMR part 102–34.
§ 101–25.111 Environmental impact policy .....	Deleted because this section simply explains that environmental policies and practices are part of GSA’s policies.
§ 101–25.112 Energy conservation policy .....	Deleted because conservation and efficiency is contained in other Federal law and policy addressing the procurement, management, and disposal of personal property and nonpersonal services. For example, see the Energy Policy Act (EPACT) laws and related Executive Orders (E.O.) (e.g., E.O. 13423 and E.O. 13514).
§ 101–25.113 [Reserved] .....	Deleted.
§ 101–25.114 Supply management surveys and assistance .....	Necessary policy summarized in section 102–32.50.
Subpart 101–25.2 Interagency Purchase Assignments .....	Deleted. This policy is provided in FAR Subpart 17.5; Interagency Acquisitions.
Subpart 101–25.3 Use Standards .....	Necessary policy summarized in section 102–32.55; overly-prescriptive policy is deleted.
Subpart 101–25.4 Replacement Standards .....	Necessary policy summarized in section 102–32.55; overly-prescriptive policy is deleted.
Subpart 101–25.5 Purchase or Lease Determinations .....	Deleted as unnecessary.
Subparts 101–25.6 through 101–25.49 [Reserved] .....	Deleted “reserved” sections.

**C. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 of September 30, 1993 (“Regulatory Planning and Review”), and 13563 of January 18, 2011 (“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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not a significant regulatory action, and therefore, is not subject to review under Section 6(b) of E.O. 12866. This proposed rule is not a major rule under 5 U.S.C. 804.

**D. Regulatory Flexibility Act**

This proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This proposed rule is also exempt from the Administrative Procedure Act per 5 U.S.C. 553(a)(2) because it applies to agency management or personnel or to public property.

**E. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this proposed rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the

Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

**F. Small Business Regulatory Enforcement Fairness Act**

This proposed rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management or personnel and does not substantially affect the rights or obligations of non-agency parties.

**List of Subjects in Parts 101–25 and 102–32**

Public contracts, Management of property.

Dated: February 6, 2015.

**Christine J. Harada,**  
*Associate Administrator, Office of Government-wide Policy.*

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR chapters 101 and 102 as follows:

**CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS**

**PART 101–25—GENERAL**

- 1. Revise the authority citation for part 101–25 to read as follows:

**Authority:** 40 U.S.C. 121(c) and 40 U.S.C. 506(a).

- 2. Revise § 101–25 to read as follows:

**§ 101–25 Cross-reference to the Federal Management Regulation (FMR) (41 CFR parts 102–1 through 102–220).**

For information on the supply and procurement of personal property previously contained in this part, see FMR part 102–32 (41 CFR part 102–32).

**CHAPTER 102—FEDERAL MANAGEMENT REGULATION**

**SUBCHAPTER B—PERSONAL PROPERTY**

- 3. Add part 102–32 to subchapter B of chapter 102 to read as follows:

**PART 102–32—SUPPLY AND PROCUREMENT**

- Sec.
- 102–32.5 What is the purpose of this part?
  - 102–32.10 How does this part use “I,” “me,” and “you”?
  - 102–32.15 How does this part apply to my agency?
  - 102–32.20 What definitions apply to this part?
  - 102–32.25 How may I use Government personal property and services?
  - 102–32.30 How must I acquire personal property?
  - 102–32.35 How do I determine the best method of supply?
  - 102–32.40 What processes are available to effectively manage agency personal property assets?
  - 102–32.45 How do I manage low-value Federal personal property?
  - 102–32.50 What are supply management surveys?
  - 102–32.55 What are Use and Replacement Standards?

**Authority:** 40 U.S.C. 121(c) and 40 U.S.C. 506(a).

**§ 102–32.5 What is the purpose of this part?**

This part provides policy for the effective and efficient supply and procurement of personal property items necessary to support the programs of the Federal Government, as well as the use of Federal personal property assets to preserve agency funds and contribute to the accomplishment of agency missions.

**§ 102–32.10 How does this part use “I,” “me,” and “you”?**

This part uses “I,” “me,” and “you” to refer to executive agency personnel. When referring to the organization, the term “agency” is used.

**§ 102–32.15 How does this part apply to my agency?**

All executive agencies and personnel, including the Department of Defense, must follow the policies in this part unless specifically exempted by separate statute or regulation.

**§ 102–32.20 What definitions apply to this part?**

The following definitions apply to this part:

*Equipment Pool* means the collection, at a central point, of equipment under control for short term issue to individuals or organizations.

*Method of supply* means the process for an agency to obtain those items of personal property needed to fulfill the agency’s mission.

*Nonpersonal services, as defined at 40 U.S.C. 472* means such contractual services, other than personal and professional services, under which the personnel rendering the services are not subject, either by the contract’s terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

*Voluntary Consensus Standards* means standards developed or adopted by bodies (which are domestic or international organizations which plan, develop, establish, or coordinate standards using agreed-upon procedures), and which include provisions requiring that owners of relevant intellectual property agree to make intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties (see OMB Circular A–119 at [http://www.whitehouse.gov/omb/circulars\\_a119/](http://www.whitehouse.gov/omb/circulars_a119/)).

**§ 102–32.25 How may I use Government personal property and services?**

Except in emergencies, Government personal property and nonpersonal services shall be used only for those purposes for which they were obtained or for other officially designated agency purposes. Emergency conditions are those threatening loss of life and property. This includes property and services on interagency loan as well as property leased by agencies.

**§ 102–32.30 How must I acquire personal property?**

Personal property (as defined in FMR 102–36.40), must be acquired only to

fulfill an official purpose, and be acquired so as to minimize the cost and maximize the utility to the Federal Government, reasonably considering alternative items and acquisition methods in accordance with the Federal Acquisition Regulation (FAR), 48 CFR 1.000, *et seq.*, or other applicable law. Each executive agency shall determine whether using currently owned items can meet the requirements of the agency prior to the acquisition of new items. Each executive agency shall also, to the extent practicable, use excess personal property from other agencies before acquiring new items.

**§ 102–32.35 How do I determine the best method of supply?**

When acquiring supplies, you must determine and utilize the method of supply that is most advantageous to the Federal Government. You must consider the costs and benefits of the various supply methods and all orders must be within the planned requirements for use. General supply methods include, but are not limited to supply through:

(a) Storage and issue—where an item can be most advantageously supplied through storage and issued accordingly;

(b) Consolidated purchase for direct delivery to storage or redistribution locations—where an item can be most advantageously supplied through consolidated purchase for direct delivery;

(c) Indefinite quantity requirement contracts—where an item can be most advantageously supplied through indefinite quantity requirement contracts covering specific periods and providing for delivery (see FAR Subpart 16.5)); and

(d) Local purchase—where the local purchase is within applicable limitation established by the agency head and will produce the greatest economy to the Government.

**§ 102–32.40 What processes are available to effectively manage agency personal property assets?**

You should establish any necessary policies, procedures, and controls to effectively manage your agency’s personal property, so that you can determine whether your agency’s requirements can be met by using existing personal property, instead of procuring similar equipment. Agencies should consider:

(a) Identifying idle and unnecessary assets. You should conduct inspection tours of agency facilities on a scheduled basis, annually, if feasible, but no less than every 3 years, for the purpose of identifying idle and unnecessary assets; and

(b) Establishing equipment pools. You should establish equipment pools to minimize the investment in commonly-used assets typically used by many employees within a geographic area.

**§ 102–32.45 How do I manage low-value Federal personal property?**

Your agency must determine the threshold for which property is considered accountable. Low-value personal property is any asset valued at less than this accountability threshold. Low-value personal property is “expendable” and may be handled by:

(a) Restricting approval of requisitions for replenishment of storeroom stocks to officials at a responsible supervisory level to ensure that supply requirements are justified based on need and quantity;

(b) Establishing adequate safeguards and controls to ensure that expendable supplies are used for official use only; and

(c) Giving special attention and care to those consumable or low cost items when issues are excessive compared to normal program needs.

**§ 102–32.50 What are supply management surveys?**

Under the provisions of 40 U.S.C. 506, GSA may perform surveys of Government property and property management practices of executive agencies. These surveys will be conducted in connection with regular studies of agency supply management practices or when providing assistance in the development of agency property accounting systems. As appropriate, GSA will provide written reports of findings and recommendations to agency heads.

**§ 102–32.55 What are Use and Replacement Standards?**

Use and Replacement Standards are procedures designed to maximize the effectiveness of asset inventories and to reduce costs. Agencies are encouraged to implement agency-specific procedures for personal property assets when appropriate.

(a) Use Standards limit the amount and type of property held by the organization to the minimum requirements necessary for the efficient functioning of the organization. An example of a Government-wide Use Standard methodology is described in FMR Bulletin B–30, relating to the management of motor vehicle assets. (Bulletins may be found at [www.gsa.gov/bulletins](http://www.gsa.gov/bulletins)). Considering the methodology in this Bulletin for the management of other assets will guide the agency to a more cost-effective operation.

(b) Replacement Standards guide agencies to consider an effective replacement strategy for Government personal property items. For example, an agency may designate a type of item to be replaced every three years, based upon the expected trends of reliability, maintenance costs, and usefulness as the item ages. However, actual replacement decisions should also consider the condition of the item.

(c) Agencies should consider voluntary consensus standards, industry standards, and Federal best-practices in developing Use and Replacement Standards. Factors to consider when choosing standards to use are outlined in OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities." Voluntary consensus standards must be used in lieu of Government-unique standards unless such use would be inconsistent with applicable law or regulation, or be otherwise impractical.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 226

[Docket No. 140407321-5096-02]

RIN 0648-XD233

#### Listing Endangered or Threatened Species; 12-Month Finding on a Petition To Revise the Critical Habitat Designation for the Southern Resident Killer Whale Distinct Population Segment

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

**ACTION:** Notice of 12-month finding.

**SUMMARY:** We, the National Marine Fisheries Service (NMFS), announce a 12-month finding on a petition from the Center for Biological Diversity to revise the critical habitat designation for the Southern Resident killer whale (*Orcinus orca*) Distinct Population Segment (DPS) under the Endangered Species Act (ESA). In November 2006 we issued a final rule designating approximately 2,560 square miles (6,630 square km) of inland waters of Washington State as critical habitat for the Southern Resident killer whale DPS. The January 2014 petition requests we revise this

critical habitat to include Pacific Ocean marine waters along the West Coast of the United States that constitute essential foraging and wintering areas for Southern Resident killer whales. Additionally, the petition requests that we adopt as a primary constituent element (PCE), for both currently designated critical habitat and the proposed revised critical habitat, protective in-water sound levels. The ESA defines a process for responding to petitions to revise critical habitat. We have reviewed the public comments and best available information on Southern Resident killer whale habitat use and as the next step in the response to the petition process defined in the ESA, this 12-month determination describes how we intend to proceed with the requested revision.

**DATES:** The finding announced in this document was made on February 24, 2015.

**ADDRESSES:** Copies of the petition, 90-day finding, and the list of references are available online at: [http://www.westcoast.fisheries.noaa.gov/protected\\_species/marine\\_mammals/killer\\_whale/esa\\_status.html](http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/killer_whale/esa_status.html)

Requests for copies of this determination should be addressed to: NMFS, West Coast Region, Protected Resources Division, 7600 Sand Point Way NE., Seattle, WA 98115. Attention—Lynne Barre, Seattle Branch Chief.

**FOR FURTHER INFORMATION CONTACT:** Lynne Barre, NMFS West Coast Region, (206) 526-4745; or Dwayne Meadows, NMFS Office of Protected Resources, (301) 427-8403.

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 21, 2014, we received a petition from the Center for Biological Diversity requesting revisions to the critical habitat designation for the Southern Resident killer whale DPS. That requested revision sets in motion a process for agency response defined in the ESA and explained below.

The ESA defines critical habitat under section 3(5)(A) as: "(i) the specific areas within the geographical area currently occupied by the species, at the time it is listed . . . 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."

Joint NMFS-Fish and Wildlife Service (FWS) regulations for designating critical habitat at 50 CFR 424.12(b) state that the agencies "shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection (hereafter also referred to as 'Essential Features' or 'Primary Constituent Elements'/PCEs')." Pursuant to these regulations, such features include, but are not limited to space for individual and population growth, and normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of a species. When considering the designation of critical habitat, we focus on the principal biological or physical constituent elements, known as primary constituent elements (PCEs). PCEs may include, but are not limited to: nesting grounds, feeding sites, water quality, tide, and geological formation. Our implementing regulations (50 CFR 424.02) define "special management considerations or protection" as any method or procedure useful in protecting physical and biological features of the environment for the conservation of the species.

Section 4(b)(2) of the ESA requires us to designate and make revisions to critical habitat for listed species based on the best scientific data available and 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. The Secretary of Commerce may exclude any particular area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

NMFS and FWS have recently published proposed rules to implement changes to the regulations for designating critical habitat. The proposed amendments would make minor edits to the scope and purpose, add and remove some definitions (e.g., geographic area and essential features), and clarify the criteria for designating critical habitat (79 FR 27066; May 12, 2014). We will incorporate any relevant final regulations and guidance into our process for revising critical habitat.

The ESA provides that NMFS may, from time-to-time, revise critical habitat as appropriate (section 4(a)(3)(B)). In accordance with section 4(b)(3)(D)(i) of the ESA, to the maximum extent practicable, within 90 days of receipt of a petition to revise critical habitat, the Secretary of Commerce is required to make a finding as to whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register**. On April 25, 2014 (79 FR 22933), we published our 90-day finding that the petition, viewed in the context of the information readily available in our files, presented substantial information indicating that revising critical habitat may be warranted and initiated a review of the current critical habitat designation. To ensure a comprehensive review of the current critical habitat designation and new information that is now available, we solicited scientific and commercial information regarding the petitioned action.

When we find that a petition presents substantial information indicating that a revision may be warranted, we are required to determine how we intend to proceed with the requested revision within 12 months after receiving the petition, and promptly publish notice of our intention in the **Federal Register**. The statute says nothing more about options or considerations regarding the 12-month determination or timelines associated with issuance of a proposed rule, (see section 4(b)(3)(D)(ii)). This notice reviews the current critical habitat designation, the petition for revision, summarizes comments on the 90-day finding, and describes how we intend to proceed with the requested revisions to critical habitat for the Southern Resident killer whale DPS.

#### **Current Critical Habitat Designation**

Following the ESA listing of the Southern Resident killer whale DPS (70 FR 69903; November 18, 2005), we finalized a designation of critical habitat in 2006 (71 FR 69054; November 29, 2006). We summarized available information on natural history, habitat use, and habitat features in a Biological Report accompanying the designation (NMFS, 2006). Based on the natural history of the Southern Resident killer whales and their habitat needs, the physical or biological features necessary for conservation were identified as: (1) Water quality to support growth and development; (2) prey species of sufficient quantity, quality and availability to support individual growth, reproduction and development,

as well as overall population growth; and (3) passage conditions to allow for migration, resting, and foraging.

The final critical habitat designation identified three specific areas, within the area occupied, which contained the essential features listed above. The three specific areas designated as critical habitat were (1) the Summer Core Area in Haro Strait and waters around the San Juan Islands; (2) Puget Sound; and (3) the Strait of Juan de Fuca, which in total comprise approximately 2,560 square miles (6,630 sq km) of marine habitat. We determined that the economic benefits of exclusion of any of the areas did not outweigh the benefits of designation, and we therefore did not exclude any areas based on economic impacts. We considered the impacts to national security, and concluded the benefits of exclusion of 18 military sites, comprising approximately 112 square miles (291 sq km), outweighed the benefits of inclusion, because of national security impacts, and therefore, the sites were not included in the designation. The critical habitat designation included waters deeper than 20 feet (6.1 m) relative to the extreme high water tidal datum.

At the time of the designation, we noted that there were few data on Southern Resident killer whale distribution and habitat use of the coastal and offshore areas in the Pacific Ocean. Although we recognized that the whales occupy these waters for a portion of the year and considered them part of the geographical area occupied by the species, we declined to designate these areas as critical habitat because the data informing whale distribution, behavior and habitat use were insufficient to define “specific areas” (see Coastal and Offshore Areas section; 71 FR 69054; November 29, 2006).

#### **Petition To Revise Critical Habitat**

On January 21, 2014, we received a petition from the Center for Biological Diversity requesting revision to the critical habitat designation for the Southern Resident killer whale DPS. The petition lists recent sources of information on the whales’ habitat use along the West Coast of the U.S., particularly from NMFS’ Northwest Fisheries Science Center (NWFSC) programs, such as satellite tagging conducted in 2012 and 2013. The petition also reviews natural history and threats to the whales. The Center for Biological Diversity proposes that the critical habitat designation be revised and expanded to include the addition of the Pacific Ocean region between Cape Flattery, WA, and Point Reyes, CA, extending approximately 47 miles (76

km) offshore. The petition identifies that each of the three PCEs identified in the 2006 critical habitat designation (see Current Critical Habitat Designation Section above) are also essential features in the whales’ Pacific Ocean habitat. In addition, the petition asks us to adopt a fourth PCE for both existing and proposed critical habitat areas providing for in-water sound levels that: “(1) do not exceed thresholds that inhibit communication or foraging activities, (2) do not result in temporary or permanent hearing loss to whales, and (3) do not result in abandonment of critical habitat areas.”

The standard for determination of whether a petition includes substantial information is whether the amount of information presented provides a basis for us to find that it would lead a reasonable person to believe that the measure proposed in the petition may be warranted. Based on the information presented and referenced in the petition, as well as all other information readily available in our files, we found that the recent information on the whales’ movements through their offshore habitat and discussion of sound as a feature of habitat met this standard and published a 90-day finding accepting the petition and requesting information to inform a review of the current critical habitat designation (79 FR 22933; April 25, 2014).

#### **Summary of Public Comments**

In the 90-day finding we solicited new information from the public, governmental agencies, tribes, the scientific community, industry, environmental entities, and any other interested parties concerning (1) the essential habitat needs and use of the whales, (2) the West Coast area proposed for inclusion, (3) the physical and biological features essential to the conservation of Southern Residents and that may require special management considerations or protection, (4) information regarding potential benefits or impacts of designating any particular area, including information on the types of Federal actions that may affect the area’s physical and biological features, and (5) current or planned activities in the areas proposed as critical habitat and costs of potential modifications to those activities due to critical habitat designation. We requested that all data and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications.

The public comment period on the 90-day finding closed on June 24, 2014, and all of the comments received can be viewed at [www.regulations.gov](http://www.regulations.gov) by

searching for FDMS docket number “NOAA–NMFS–2014–0041”. We received 275 comments from a variety of individuals and organizations including researchers, concerned citizens, private, government and nonprofit organizations. The majority of comments (over 250) were brief expressions of support for expanding the Southern Resident killer whale’s critical habitat to offshore and coastal areas; two commenters were opposed to the petition’s proposed revision of critical habitat. In addition, many commenters noted sound was important to killer whales and six specifically supported including sound as a PCE for critical habitat. There were fifteen commenters that provided substantive information or comments. Thirteen of these commenters supported the petitioned action, and many referenced the data presented in the petition, which largely comes from recent NWFSC studies conducted from 2006–2013. Some commenters offered additional information, including data on ocean and Puget Sound fisheries, salmon populations along the Washington coast, and whale sightings in inland waters and off the Washington, Oregon, and California coasts. Below we provide a summary of the substantive comments and information so the public is aware of the information submitted. Where appropriate, we have combined similar comments. We will take into account the comments and information provided in our consideration of a revision to critical habitat.

#### *Geographical Area Occupied by the Species*

*Comment 1:* Several commenters noted that the data from satellite tracking and tagging, visual sightings, acoustic recorders, and strandings all provide evidence that the Southern Resident killer whales regularly use the coasts of Washington, Oregon, and California during part of the year. One commenter suggested that more research be conducted to help decide if the proposed southern boundary be extended even farther south. Several commenters provided evidence that suggests the whales are spending less time in inland waters, specifically in spring months, and have likely increased their use of offshore waters. They noted the coast is important to the whales, which makes the need of an expanded protected area essential.

*Comment 2:* Two commenters urged that we should reconsider the protection of the Hood Canal and include it in the revised critical habitat designation and one suggested expanding critical habitat

into shallower waters. These commenters stressed the historical importance of Hood Canal to the whales and noted that it was used on a regular basis until the early 1980s. The last confirmed use of Hood Canal by the Southern Residents occurred in 1995, which one commenter noted was less than 4 years prior to the formal listing process. Based on the extensive use of Hood Canal by transient killer whales, they noted Hood Canal possesses the physical and biological features necessary to support the whales. Due to its proximity to the core use area in the San Juan Islands, prey resources in Hood Canal could be used, and Hood Canal would provide a safe refuge in the event of an oil spill. In addition to expanding inland critical habitat to include Hood Canal, one commenter suggested expanding critical habitat to shallower water for the pursuit of prey, socializing, grooming, and playing. The commenter argued that including the whale’s active space in critical habitat (or the space around an individual that is perceived visually or auditorily) is more appropriate than creating an arbitrary border at 20 feet (6.1m) of water.

#### *Military Exclusions*

*Comment 3:* One commenter noted that NMFS should only exclude a subset of the military exclusion requests or completely revoke all of the exclusions. This comment was based on the large size and Southern Resident killer whale use of some military areas and suggestions that military activities could be moved to reduce overall area or mitigation for military areas could be considered elsewhere.

#### *Sound as an Essential Feature of Critical Habitat*

*Comment 4:* Many commenters expressed concern that underwater noise can affect Southern Resident killer whales in numerous ways, including disrupting communication, reducing the distance of detecting prey or other whales, masking echolocation, temporarily or permanently impairing hearing, causing strandings or mortality, causing other stress-related harm, and leading to habitat abandonment. Several of these commenters were concerned that ambient underwater noise levels are rapidly increasing in the whales’ habitat. For example, one commenter was concerned that a proposed expansion of naval structures in the Puget Sound will add more noise to the current levels that may cause behavioral disturbance. Another commenter was concerned about an increase in Navy training and testing activities in the

Pacific Ocean that could put the killer whales in more danger. One commenter was concerned that the issuance of incidental take permits does not occur for all noise sources (e.g., there is no regulation of shipping noise, recreational vessel and commercial whale watch vessel traffic noise or noise from fisheries). Another commenter argued that noise pollution is hurting the gene pool by unintentionally selecting against acute hearing, which they argue is likely to reduce the fitness of individuals in the population.

These commenters urged us to identify a sound-based PCE and identify sound levels that do not (1) exceed thresholds that inhibit communication or foraging activities, (2) result in temporary or permanent hearing loss to the whales, or (3) result in the abandonment of critical habitat areas. One commenter added that the sound-based PCE should be established so as not to cause chronic stress, including stress that is potentially sufficient to impair reproduction, or increase morbidity or the risk of mortality. They suggested that we evaluate whether a numeric standard for the sound PCE may be appropriate to determine when adverse modification of critical habitat occurs. However, if numerical standards are not supported by available data, they suggested we adopt proxies from other species. Lastly, several commenters noted that the Canadian government has identified acoustic degradation as one of the main threats to killer whales and the acoustic quality of the Southern and Northern Resident killer whales’ critical habitat in Canada is legally protected by the Critical Habitat Protection Order (see [http://www.registrelep-sararegistry.gc.ca/document/default\\_e.cfm?documentID=1756](http://www.registrelep-sararegistry.gc.ca/document/default_e.cfm?documentID=1756).)

One commenter supports the petition, but cautioned that the establishment of in-water sound levels based on results from the work primarily from one researcher (Williams *et al.*, 2009; 2013; 2014), which they still considered to be a work-in-progress and, based on another population of killer whales, could result in a disproportionate and distractive regulatory action against the boat-based whale watch industry.

Another commenter asked us to reject the petition and believes revising critical habitat to include the coastal waters of Washington, Oregon, and California and/or adopting a sound PCE would compromise military readiness and national security by substantially limiting training, testing, and construction activities. Furthermore, the commenter stated the PCE criteria described in the petition are too vague for a complete assessment of potential

impacts to Navy activities, and they requested we clarify the details on the sound PCE (e.g., the frequency of sounds of concern, the duration and type of sounds and sound producing activity that would likely create an adverse effect, the sound level threshold, timing, the certainty to which an animal would need to be present to trigger restrictions, and implementation and enforcement techniques), in order to adequately assess the impacts to national security.

Another commenter asked us to reject the petition and argued that sound is not a tangible feature contemplated by the ESA, but rather is an element that can be introduced into the aquatic environment that has the potential to have a direct effect on a species. They also argued the effects to a species from an action should be addressed in the section 7 jeopardy analysis, whereas the adverse modification analysis needs to address the potential impacts of the action on the habitat. With the exception of Cook Inlet beluga whales designated critical habitat that includes in-water noise below levels resulting in the abandonment of critical habitat areas (50 CFR 226.220), they note that designating sound as a PCE would be a departure from NMFS' prior practice of not including sound, even for species that can be affected by in-water sound (i.e., right whales). Lastly, they claim there is no factual basis to designate sound as a PCE and the petition does not narrowly define designated critical habitat. For example, they argue that no information in the petition shows where the specific areas containing the elements of the noise PCE are found, and the biological needs of the whales are not well known enough to determine specific marine areas with sound levels essential to their conservation.

#### *Essential Features and Special Management Considerations*

*Comment 5:* Several commenters argued that Southern Resident killer whales are susceptible to threats outside their current protected habitat and the proposed area for critical habitat is in need of protection. The commenters noted that the whales feed on salmon, breed, and calve while in coastal waters. They highlighted that current Southern Resident killer whale critical habitat only protects summer and fall Chinook salmon stocks. One commenter stressed that the winter and spring runs of Chinook salmon along the outer coast represent a major food source for the whales and that these runs should also be protected. Because the whales appear to be spending less time in inland waters, specifically in spring months,

commenters noted that the whales have likely increased their reliance on coastal salmon. Several of the commenters also highlighted that the whales are likely giving birth in these coastal waters in the autumn/winter months and may require more food for lactating mothers. Another commenter argued that the declining coast-wide availability of Chinook salmon reinforces the need to include this area as designated critical habitat to ensure the survival of the salmon on which the Southern Residents depend. In general, these commenters supported expanding critical habitat to encompass the whale's year-round range, which includes coastal waters of Washington, Oregon, and California, to ensure the conservation of all current foraging grounds and that expanding critical habitat will support sufficient prey to help the whales recover.

In addition to the concern over prey availability, several commenters were concerned that the Southern Residents have acquired high levels of pollutants linked to California that may affect reproduction and the population decline. They also highlighted that because the whales occupy a highly industrialized area, foraging near outflow of large rivers that carry pollutants can directly affect the whale's health and prey. Additionally, they strongly urged us to ensure that the use and disposal of chemicals do not conflict with the whale's habitat. Improving water quality in the whales' coastal winter range requires special management and protection, which they argue is provided by designating the area as critical habitat.

Nineteen commenters mentioned the general threats to Southern Resident killer whales from ships, and several of those commenters argued that special management is needed in offshore waters to address the threats from increasing ship traffic within the coastal range of the whales because traffic likely impacts killer whale foraging habits. In addition, they note an increase in port size or vessel traffic could also have a significant risk because it will increase the risk of collision. They urge us to revise critical habitat to ensure that decisions regarding the expansion of fossil fuel transportation and other maritime activities do not impact the killer whale's coastal range. Several commenters highlighted that the increase in development of alternative energy sources may also pose a possible passage risk to the killer whales, thereby requiring special management and oversight. Lastly, one commenter was concerned that migration of prey species due to ocean acidification and climate

change could impose additional challenges for the whales.

#### **12-Month Determination on Revision of Critical Habitat**

Since critical habitat for Southern Resident killer whales was designated in 2006, new information on habitat use has become available. As described in the critical habitat designation in 2006, we have been directly engaged in research activities to fill data gaps about coastal habitat use. Collecting information to better understand coastal distribution was also identified as a top priority in developing the Research Plan and Recovery Plan for Southern Resident killer whales (NMFS, 2008). In 2011, NMFS completed a 5-year review of the status Southern Resident DPS under the ESA (NMFS, 2011). In the 5-year review, one of the recommendations for future actions was to increase knowledge of coastal distribution, habitat use and prey consumption to inform critical habitat determination. As identified in the petition and the public comments, the NWFSC and our partners have employed several techniques to collect information on coastal distribution and behavior, some of which include land-based sightings, passive acoustic monitoring, coastal research cruises, and satellite tag studies. In 2014, we released a 10-year report on research and conservation for Southern Resident killer whales, which summarized some of the major findings of this ongoing research on coastal habitat use and listed almost a dozen papers and reports that have become available since 2006. The report and a full list of publications are available on our Web page at: [http://www.nwfsc.noaa.gov/news/features/killer\\_whale\\_report/index.cfm](http://www.nwfsc.noaa.gov/news/features/killer_whale_report/index.cfm).

Additional information since the 2006 critical habitat designation regarding effects of anthropogenic sound on marine mammals was also provided in the petition. The petition references new information on killer whale responses to vessel noise (Erbe *et al.*, 2012; Holt, 2008; Holt *et al.* 2009, Williams *et al.*, 2009, Williams *et al.*, 2014), as well as a review of the acoustic quality of habitats for whale populations, including killer whales (Williams *et al.*, 2013). Many of these publications are also listed in the recent 10-year report along with several other articles and reports from NWFSC projects and partnerships investigating vessel interactions and noise effects.

#### **How We Intend To Proceed**

Based on the new information above, we intend to proceed with the petitioned action to revise critical

habitat for Southern Resident killer whales. Below we identify the steps we will take to ensure that we use the best available scientific and commercial data to inform any revision and meet the statutory requirements for designating or revising critical habitat.

*Step 1: Complete Data Collection and Analysis*

While data from new studies are available in our files and have begun to address data gaps identified in the 2006 critical habitat designation, considerable data collection and analysis needs to be conducted to refine our understanding of the whales' habitat use and needs. Additional time will increase sample sizes and provide the opportunity to conduct robust analyses. While we have been actively working on gathering and analyzing data on coastal habitat use, these data and analyses are not yet sufficiently developed to inform and propose revisions to critical habitat as requested in the petition. Additional data and analyses will contribute to identification of biological and physical features—as well as areas in the Pacific Ocean that contain these features—to inform the identification of specific areas. In the petition, the Center for Biological Diversity recognized that we are continuing to gather and analyze data describing the Southern Residents' use of coastal and offshore waters and requested we refine the proposed revisions, as necessary, to include additional inhabited zones or to focus specifically on areas of concentrated use.

There are several ongoing studies that will inform any revisions to critical habitat. The NWFSC and our partners are currently engaged in the following projects and we anticipate new data, analyses, reports and papers regarding coastal habitat use available over the next 2 years. Below are descriptions of several ongoing data analysis projects, plans for collecting additional data, and projects that bring together and analyze data from a number of sources.

*Sighting networks:* For many years, NMFS, the Center for Whale Research, and other partners have solicited sightings of killer whales, including the Southern Residents, along the coast. Prior to 2003, data on the whales' winter distribution and movement patterns were limited to a handful of sightings reported by a diverse group of ocean users. We will continue to solicit coastal sightings from the public and ocean users, and will also follow up on sighting information presented in the public comments on the 90-day finding. Although this work continues, in recent years we have used a variety of new

technologies described below to supplement and expand the sighting network information.

*Acoustic recorders:* The NWFSC has been deploying passive acoustic recorders in coastal waters to capture acoustic calls of marine mammals, and Southern Resident killer whales in particular, to better understand distribution and habitat use. Hanson *et al.* (2013) analyzed and reported results on coastal occurrence of Southern Residents using these recorders deployed in 2006 through 2011; however, there are additional years of data from 2012–2014 now available and undergoing analysis. In addition, this project will be expanded with new recorder deployments in 2015 to expand sample sizes with new data and a comprehensive analysis is expected in 2016.

*Satellite tagging:* Since 2012, the NWFSC has deployed satellite tags on five Southern Resident killer whales, including one extended deployment on K25 that lasted for 93 days. The information gathered from satellite tagging will address the data gap in winter distribution identified in the Recovery Plan, as well as provide further information on habitat use. This technique has been identified as an important approach for obtaining information on habitat use by an independent science panel that assessed the impact of salmon fisheries on Southern Resident killer whales (Hilborn *et al.*, 2012). Analysis of the existing data is currently underway and the program will continue with additional tag deployments planned for 2015–2016.

*Research cruises:* NMFS' NWFSC has located Southern Resident killer whales off the Washington and Oregon coasts on six of seven NOAA cruises to study the whales since 2004. In 2013, researchers used satellite tagging information to follow the whales along the coast for eight days, allowing nearly continuous investigations of behavior and habitat use. Scientists also collected numerous prey and fecal samples to learn more about winter diet as well as oceanographic data to improve our understanding of important features of the whales' environment along the coast. The NWFSC has a research cruise planned for February 2015 and also plans to request ship time for a cruise in 2016. In addition to further analysis of existing cruise data, cruise reports and additional analysis from 2015 and 2016 will be available in the next 2 years.

*Prey mapping:* The NWFSC and Southwest Fisheries Science Center (SWFSC) are working together to

investigate salmon distributions along the West Coast. This project will analyze coded wire tag data and other available data sources to build prey maps of spring, summer and fall distribution of salmon. Results from this analysis are anticipated in summer of 2015 and will inform consideration of prey as a potential essential feature of the whales' coastal habitat. In addition, results from this study will inform other projects, such as the individual based bioenergetics model described below.

*Individual based model:* The SWFSC, NWFSC and other partners are in the process of developing a spatially-explicit individual based model (IBM) to explore the effects of variation in the abundance and distribution of salmon stocks and other coastal fishes on the net energy gain of Southern Resident killer whales during the non-summer months. The initial purpose of the IBM is to integrate available data within a single analytical framework, and support development of a research strategy for identifying critical habitat for Southern Resident killer whales off the coasts of Washington, Oregon, and California. Ultimately, the IBM will be used to investigate whether and how modeling critical habitat and prey resource management could be effective at minimizing the risk of energy balances falling below critical thresholds. Phase I of the project will include a literature review and a model framework vetted by the project partners. Completion of this phase is anticipated in July 2015. Pending continued funding, a second phase of the project will include a second generation model to investigate one or more specific hypotheses on the relationship between habitat/prey attributes and whale vital rates, which would be available in 2016.

*Step 2: Identify Areas Meeting the Definition of Critical Habitat*

Pursuant to ESA section 3(5)(A), we must determine “the geographical area occupied by the species at the time of listing.” Next we identify physical or biological features essential to the conservation of the species. Agency regulations at 50 CFR 424.12(b) interpret the statutory phrase “physical or biological features essential to the conservation of the species.” The regulations state that these features include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or



are representative of the historical geographical and ecological distribution of a species. After determining the geographical area occupied by the Southern Residents, and the physical and biological features essential to their conservation, we would next identify the specific areas within the geographical area occupied by the species that contain the essential features. Specific areas meet the definition of critical habitat if they contain physical or biological features that “may require special management considerations or protection.” Joint NMFS and USFWS regulations at 50 CFR 424.02(j) define “special management considerations or protection” to mean “any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.”

For the 2006 designation we reviewed the natural history, habitat use and habitat features in a Biological Report to assist with identifying areas that meet the definition of critical habitat. We will consider the previous designation and new information that has become available to evaluate areas eligible for critical habitat designation. An additional part of this evaluation is considering military areas that are precluded from designation because they are subject to Integrated Natural Resource Management Plans under the Sikes Act and provide benefits to the listed species.

#### *Step 3: Section 4(b)(2) Analysis*

Section 4(b)(2) of the ESA requires us to use the best available data in

designating critical habitat. It also requires that before we designate any particular area, we must consider the economic impact, impact on national security, and any other relevant impact. To determine the impact of designation, we can examine what the state of things would be with and without a critical habitat designation. For the 2006 designation we conducted an Economic Analysis to identify economic impacts and also coordinated with the Department of Defence to evaluate impacts of designation on national security.

Under section 4(b)(2) we also identify the conservation benefits to the species of designating particular areas. The principal benefit of designating critical habitat is that ESA section 7 requires every Federal agency to ensure that any action it authorizes, funds, or carries out is not likely to result in the destruction or adverse modification of designated critical habitat. This complements the section 7 provision that Federal agencies ensure their actions are not likely to jeopardize the continued existence of a listed species. Another possible benefit is that the designation of critical habitat can serve to educate the public regarding the potential conservation value of an area.

The next step in the 4(b)(2) analysis is to balance the benefits of designation against the benefits of exclusion and recommend any exclusions, if appropriate. We must also determine whether any exclusion will result in extinction of the species. For the 2006 designation we completed a 4(b)(2) report that considered the benefits of designation and benefits of exclusions

and we did exclude military areas based on national security impacts.

#### *Step 4: Develop Proposed Rule for Public Comment*

Steps 1–3 will inform any proposal for revision of critical habitat. The underlying science of the decision would be required to undergo peer review according to the Office of Management and Budget Bulletin for Peer Review, implemented under the Information Quality Act (Public Law 106–554). Any proposed rule we develop will be published in the **Federal Register** and we will seek public comment. To allow for sufficient time to incorporate anticipated research results and new analysis and to conduct economic and 4(b)(2) analyses, we anticipate developing a proposed rule for publication in the **Federal Register** in 2017.

#### **References Cited**

The complete citations for the references used in this document can be obtained by contacting NMFS (See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**) or on our Web page at: [http://www.westcoast.fisheries.noaa.gov/protected\\_species/marine\\_mammals/killer\\_whale/esa\\_status.html](http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/killer_whale/esa_status.html)

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: February 11, 2015.

**Samuel D. Rauch, III,**  
*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

[FR Doc. 2015–03378 Filed 2–23–15; 8:45 am]

**BILLING CODE 3510–22–P**

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

February 18, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725-17th Street NW., Washington, DC 20502.

Commenters are encouraged to submit their comments to OMB via email to: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received by March 26, 2015. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control

number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Rural Housing Service

*Title:* 7 CFR 1901-E, Civil Rights Compliance Requirements.

*OMB Control Number:* 0575-0018.

*Summary Of Collection:* Rural Development (RD) is required to provide Federal financial assistance through its farmer, housing, and community and business programs on an equal opportunity basis. The laws implemented in 7 CFR 1901-E, require the recipients of Rural Development's Federal financial assistance to collect various types of information by race, color, and national origin.

*Need and Use of the Information:* RD will use the information to monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis. This information is made available to USDA officials, officials of other Federal agencies and to Congress for reporting purposes. Without the required information, RD and its recipient will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner and in full compliance with the civil rights laws.

*Description of Respondents:* Individuals or households; Not-for-profit institutions; Business or other for-profit; Farms; State, Local or Tribal Government.

*Number of Respondents:* 27,000.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 560,276.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015-03686 Filed 2-23-15; 8:45 am]

BILLING CODE 3410-XV-P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

February 18, 2015.

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 and other forms of information technology.

Comments regarding this information collection received by March 26, 2015 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. Commentors are encouraged to submit their comments to OMB via email to: [OIRA\\_Submission@omb.eop.gov](mailto: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.

### Forest Service

*Title:* Qualified Product List for Wild Land Fire Chemicals.

*OMB Control Number:* 0596-0182.

*Summary of Collection:* In the Forest Service (FS) Manual 5162, its objective is, "To have available and utilize adequate types and quantities of qualified fire chemical products to accomplish fire management activities safely, efficiently, and effectively." To accomplish their objective, FS evaluates

chemical products that may be used in direct wildland fire suppression operations prior to their use on lands managed by the FS. Safe products do not include ingredients that create an enhanced risk, in typical use, to either the firefighters involved or the public in general. Safety to the environment in terms of aquatic (fish, clean water) and terrestrial environments (wildlife, plants) is also considered.

**Need and Use of the Information:** FS will collect the listing of individual ingredients and quantity of these ingredients in the formulation of a product being submitted for evaluation in order to test the products using various Technical Data Sheets and other forms. The entity submitting the information provides the FS with the specific ingredients used in its product and identifies the specific source of supply for each ingredient. The information collected is specific mixing requirements and hydration requirements of gum-thickened retardants. The information provided will allow the FS to search the List of Known and Suspected Carcinogens, as well as the Environmental Protection Agency's List of Highly Hazardous Materials, to determine if any of the ingredients appear on any of these lists. Without the information FS would not be able to assess the safety of the wildland fire chemicals utilized on FS managed land, since the specific ingredients and the quantity of each ingredient used in a formulation would not be known.

**Description of Respondents:** Business or other for-profit.

**Number of Respondents:** 7.

**Frequency of Responses:** Reporting; Other (once).

**Total Burden Hours:** 11.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2015-03685 Filed 2-23-15; 8:45 am]

**BILLING CODE 3411-15-P**

**DEPARTMENT OF AGRICULTURE**

**Food Safety and Inspection Service**

[Docket No. FSIS-2015-0008]

**Codex Alimentarius Commission: Meeting of the Codex Committee on Pesticide Residues (CCPR)**

**AGENCY:** Office of the Under Secretary for Food Safety, USDA.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** The Office of the Under Secretary for Food Safety, U.S.

Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS), and the U.S. Environmental Protection Agency (EPA) are sponsoring a public meeting on March 16, 2015.

The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 47th Session of the Codex Committee on Pesticide Residues (CCPR) of the Codex Alimentarius Commission (Codex), taking place in Beijing, China, April 13-18, 2015. The Deputy Under Secretary for Food Safety and the EPA recognize the importance of providing interested parties the opportunity to obtain background information on the 47th Session of CCPR and to address items on the agenda.

**DATES:** The public meeting is scheduled for Monday, March 16, 2015, from 2:00-4:00 p.m.

**ADDRESSES:** The public meeting will take place at the U.S. Environmental Protection Agency (EPA), Room S-7100, One Potomac Yard South, 2777 South Crystal Drive, Arlington, VA 22202.

Documents related to the 47th Session of CCPR will be accessible on-line at the following address: <http://www.codexalimentarius.org/meetings-reports/en/>.

Barbara Madden, U.S. Delegate to the 47th Session of the CCPR, the EPA, and the USDA, invite interested parties to submit their comments electronically to the following email address: [Madden.barbara@epa.gov](mailto:Madden.barbara@epa.gov).

**Call-In Number:**

If you wish to participate in the public meeting for the 47th Session of the CCPR by conference call on March 16, 2015, please use the call-in numbers and participant codes listed below:

United States Call-in Number: 1-866-299-3188

International Call-in Number: 1-706-758-1822

Participant Code: 7033056463#

**Registration:**

Attendees may register by emailing [uscodex@fsis.usda.gov](mailto:uscodex@fsis.usda.gov) by March 13, 2015. Early registration is encouraged because it will expedite entry into the building. The meeting will be held in a Federal building, you should also bring photo identification and plan for adequate time to pass through security screening systems. Attendees that are not able to attend the meeting in-person but wish to participate may do so by phone.

**For Further Information About the 47th Session of the CCPR Contact:** Barbara Madden, Office of Pesticide Programs, U.S. Environmental

Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Phone: (703) 305-6463, Fax: (703) 305-6920, Email: [madden.barbara@epa.gov](mailto:madden.barbara@epa.gov).

**For Further Information About the Public Meeting Contact:** Marie Maratos, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250, Phone: (202) 205-7760, Fax: (202) 720-3157, Email: [Marie.Maratos@fsis.usda.gov](mailto:Marie.Maratos@fsis.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in the food trade.

The CCPR is responsible for establishing maximum limits for pesticide residues in specific food items or in groups of food, establishing maximum limits for pesticide residues in certain animal feeding stuffs moving in international trade where this is justified for reasons of protection of human health, preparing priority lists of pesticides for evaluation by the Joint FAO/WHO Meeting on Pesticide Residues (JMPR), considering methods of sampling and analysis for the determination of pesticide residues in food and feed, considering other matters in relation to the safety of food and feed containing pesticide residues, and establishing maximum limits for environmental and industrial contaminants showing chemical or other similarity to pesticides in specific food items or groups of food.

The Committee is hosted by China.

**Issues To Be Discussed at the Public Meeting**

The following items on the agenda for the 47th Session of CCPR will be discussed during the public meeting:

- Matters referred to the committee by Codex and other subsidiary bodies
- Matters of interest arising from FAO and WHO
- Matters of interest arising from other international organizations
- Draft Maximum Residue Limits (MRLs) for pesticides
- Draft Revision to the Classification of Food and Feed (CFF) (vegetable commodity groups: Group 016—Roots and Tubers)

- Proposed draft revision to the CFF (vegetable commodity groups: Group 015—Pulses)
  - Proposed draft MRL's for Pesticides
  - Proposed draft Guidance on Performance criteria for methods of analysis for the determination of Pesticide residues
  - Proposed draft revision to the CFF (vegetable commodity groups: Groups 011 Fruiting vegetables, cucurbits and Group 014 Legume vegetables)
  - Proposed draft revision to the CFF—other commodity groups
  - Proposed draft Table 2: Examples of Selection of Representative Commodities—Vegetable commodity groups and other commodity groups
  - Establishment of Codex schedules and priority list of Pesticides for evaluation by JMPR
- Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the Committee meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

#### Public Meeting

At the March 16, 2015, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Barbara Madden, U.S. Delegate for the 47th Session of the CCPR (see **ADDRESSES**). Written comments should state that they relate to activities of the 47th Session of the CCPR.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: <http://www.fsis.usda.gov/federal-register>.

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <http://www.fsis.usda.gov/subscribe>.

Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

#### USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

#### How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed on-line at [http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain\\_combined\\_6\\_8\\_12.pdf](http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf), or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

#### Mail

U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250-9410.

#### Fax

(202) 690-7442.

#### Email

[program.intake@usda.gov](mailto:program.intake@usda.gov).

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Done at Washington, DC on: February 19, 2015.

**Marie Maratos,**

*Acting U.S. Manager for Codex Alimentarius.*

[FR Doc. 2015-03732 Filed 2-23-15; 8:45 am]

**BILLING CODE 3410-DM-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Information Collection; Airplane Pilot Qualifications and Approval Record, Helicopter Pilot Qualifications and Approval Record, Airplane Data Record, and Helicopter Data Record

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the revision of a currently approved information collection, Airplane Pilot Qualifications and Approval Record, Helicopter Pilot Qualifications and Approval Record, Airplane Data Record, and Helicopter Data Record.

**DATES:** Comments must be received in writing on or before April 27, 2015 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Comments concerning this notice should be addressed to: USDA Forest Service, Assistant Director Aviation, Fire and Aviation Management, 1400 Independence Avenue SW., Mailstop 1107, Washington DC 20250-1107.

Comments also may be submitted via facsimile to 202-205-1401, phone 202-205-1483 or by email to: [awhinaman@fs.fed.us](mailto:awhinaman@fs.fed.us).

The public may inspect comments received at USDA Forest Service, Fire and Aviation Management, 1400 Independence Avenue SW., Washington DC 20250, during normal business hours. Visitors are encouraged to call ahead to 202-205-1483 to facilitate entry to the building.

**FOR FURTHER INFORMATION CONTACT:** Art Hinaman, Assistant Director Aviation, 202-205-1483. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 twenty-four hours a day, every day of the year, including holidays.

#### SUPPLEMENTARY INFORMATION:

*Title:* Airplane Pilot Qualifications and Approval Record, Helicopter Pilot Qualifications and Approval Record, Airplane Data Record and Helicopter Data Record *OMB Number:* 0596-0015.

*Expiration Date of Approval:* 5/31/2015.

*Type of Request:* Renewal with Revision.

*Abstract:* The Forest Service contracts with approximately 400 vendors a year for commercial aviation services utilized in resource protection and project management. In recent years, the total annual use of contract aircraft and pilots has exceeded 80,000 hours. In order to maintain an acceptable level of safety, preparedness, and cost-effectiveness in aviation operations, Forest Service contracts include rigorous qualifications for pilots and specific condition, equipment, and

performance requirements for aircraft as aviation operations are conducted under extremely adverse conditions of weather, terrain, turbulence, smoke reduced visibility, minimally improved landing areas, and congested airspace around wildfires. To ensure agency contracting officers that pilots and aircraft used for aviation operations meet specific Forest Service qualifications and requirements for aviation operations, prospective contract pilots fill out one of the following Forest Service forms:

- FS-5700-20—Airplane Pilot Qualifications and Approval Record
- FS-5700-20a—Helicopter Pilot Qualifications and Approval Record
- Contract Officers' Technical Representatives use forms:
  - FS-5700-21—Airplane Data Record
  - FS-5700-21a—Helicopter Data Record

When inspecting the aircraft for contract compliance. Based upon the approval(s) documented on the form(s), each contractor pilot and aircraft receives an approval card. The Forest Service personnel verify possession of properly approved cards before using contracted pilots and aircraft.

Information collected on these forms includes:

- Name.
- Address.
- Certification numbers.
- Employment history.
- Medical Certification.
- Airplane/helicopter certifications and specifications.
- Accident/violation history.

Without the collected information, Forest Service Contracting Officers, as well as Forest Service pilot and aircraft inspections, cannot determine if contracted pilots and aircraft meet the detailed qualification, equipment, and condition requirements essential to safe and effective accomplishment of Forest Service specified flying missions. Without a reasonable basis to determine pilot qualifications and aircraft capability, Forest Service employees would be exposed to hazardous conditions. The data collected documents the approval of contract pilots and aircraft for specific Forest Service aviation missions. Information will be collected and reviewed by Contracting Officers or their designated representatives, including aircraft inspectors, to determine whether the aircraft and/or pilot(s) meet all contract specifications in accordance with Forest Service Handbook (FSH) 5709.16, chapter 10, sections 15 and 16. Forest Service pilot and aircraft inspectors maintain the collected information in Forest Service regional offices. The

Forest Service, at times, shares the information with the Department of the Interior, Aviation Management Directorate, as each organization accepts contract inspections conducted by the other.

*Estimate of Annual Burden:* 60 minutes.

*Type of Respondents:* Vendors/Contractors.

*Estimated Annual Number of Respondents:* 2100.

*Estimated Annual Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 2100 hours.

*Comment is Invited:* Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: February 13, 2015.

**Patti Hirami,**

*Associate Deputy Chief, State and Private Forestry.*

[FR Doc. 2015-03652 Filed 2-23-15; 8:45 am]

**BILLING CODE 3411-15-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Information Collection; Forest Products Removal Permits and Contracts

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested parties on the extension with revision of a currently approved information collection, *Forest Products Free use Permit; Forest*

*Products Removal permit and Cash Receipt; and Forest Products Contract and Cash Receipt* (also referred to as *Forest Products Removal Permits and Contracts*).

**DATES:** Comments must be received in writing on or before April 27, 2015 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Comments concerning this notice should be addressed to Sharon Nygaard-Scott, Forest Management Staff, Forest Service, USDA, Mail Stop 1103, 1400 Independence Avenue SW., Washington, DC 20250.

Comments also may be submitted via facsimile to (703) 605-1575. In addition, comments may be submitted via the world wide web/Internet at: <http://www.regulations.gov>.

The public may inspect comments received at the Forest Service, Forest Management Staff Office, Third Floor SW., 201 14th Street SW., Washington, DC 20250 during normal business hours. Visitors are encouraged to call ahead to (202) 205-1766 to facilitate entry to the building.

#### FOR FURTHER INFORMATION CONTACT:

Sharon Nygaard-Scott, Forest Management Staff, at (202) 205-1766, or J. Reddan, Forest Management Staff, at (202) 205-1667. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 twenty-four hours a day, every day of the year, including holidays.

#### SUPPLEMENTARY INFORMATION:

*Title:* Forest Products Free Use Permit; Forest Products Removal Permit and Cash Receipt; and Forest Products Contract and Cash Receipt.

*OMB Number:* 0596-0085.

*Expiration Date of Approval:* 04/30/2015.

*Type of Request:* Extension with revision of a currently approved information collection.

*Abstract:* This information collection is being revised to accommodate requests by federally recognized Indian tribes for use of trees, portions of trees, or forest products, free of charge, from National Forest System lands for noncommercial traditional and cultural purposes under the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, 122 Stat. 1651) section 8105 *Forest Products for Traditional and Cultural Purposes* [hereinafter referred to as "section 8105"], and per the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320. Additionally, section 8105 has been codified in 25 U.S.C. Chapter 32A *Cultural and Heritage*

*Cooperation Authority*; section 3055 *Forest Products for Traditional and Cultural Purposes*. Pending rulemaking regarding section 8105, the Forest Service issued policy via an Interim Directive (ID) providing short-term direction for federally recognized Indian tribe requests for trees, portions of trees, or forest products for noncommercial traditional and cultural purposes. The ID has since been reissued as Forest Service ID 2409.18–2013–2.

Under 16 U.S.C. 551, individuals and businesses wishing to remove forest products from National Forest System lands must request a permit. Federally recognized Indian tribes seeking products under section 8105 authority must make a request for free use. To obtain a permit, applicants must meet the criteria at 36 CFR 223.1, 223.2, and 223.5–223.13, which authorizes free use or sale of timber or forest products. As noted above, section 8105 authority sets forth conditions under which federally recognized Indian tribes may obtain, free of charge, trees, portions of trees, or forest products for noncommercial traditional and cultural purposes. Should federally recognized Indian tribes seeking such use wish to obtain proof of possession, as may be required in some States, they could be issued a FS–2400–8 permit. Upon receiving a permit, the permittee must comply with the terms of the permit (36 CFR 261.6), which designates forest products that can be harvested and under what conditions, such as limiting harvest to a designated area or permitting harvest of only specifically designated material. The collected information will help the Forest Service and the Bureau of Land Management (for form FS–2400–1) oversee the approval and use of forest products by the public.

When applying for forest product removal permits, applicants (depending on the products requested) would provide information needed to complete one of the following:

- FS–2400–1, *Forest Products Removal Permit and Cash Receipt*, is used to sell timber or forest products such as, but not limited to, fuelwood, Christmas trees, or pine cones (36 CFR 223.1, 223.2). The Bureau of Land Management identifies the FS–2400–1 as BLM–5450–24 (43 U.S.C. 1201, 43 CFR 5420). This form would *not* be used to issue products requested by federally recognized Indian tribes under section 8105 authority.

- FS–2400–4/FS–2400–4ANF, *Forest Products Contract and Cash Receipt*, are used to sell timber products such as sawtimber or forest products such as, but not limited to, fuelwood. These forms would *not* be used to issue

products requested by federally recognized Indian tribes under section 8105 authority.

- FS–2400–8, *Forest Products Free Use Permit*, allows use of timber or forest products at no charge to the permittee (36 CFR 223.5–223.13).

This form could be used to issue products requested by federally recognized Indian tribes under section 8105 authority.

Each form listed above implements different regulations and has different provisions for compliance, but collects similar information from the applicant for related purposes.

The Forest Service and the Bureau of Land Management will use the information collected on form FS–2400–1 to ensure identification of permittees in the field by agency personnel. The Forest Service will use the information collected on forms FS–2400–4/FS–2400–4ANF and/or FS–2400–8 to:

- Ensure that permittees obtaining free use of timber or forest products qualify for the free-use program.
- Ensure that permittees obtaining free use of timber or forest products, under 36 CFR 223.8, do not receive product value in excess of that allowed by regulations. Note, however, that under section 8105 authority, there is no stated maximum free use limitation.
- Ensure that applicants purchasing timber harvest or forest products permits non-competitively do not exceed the authorized limit in a fiscal year (16 U.S.C. 472(a)).
- Ensure identification of permittees, in the field, by Forest Service personnel.

Applicants may apply for more than one forest products permit or contract per year. For example, an applicant may obtain a free use permit for a timber product such as, but not limited to, pine cones (FS–2400–8) and still purchase fuelwood (FS–2400–1, and/or FS–2400–4/2400–4ANF). Additionally, there is no limitation to the number of requests that each federally recognized Indian tribe may make under section 8105 authority.

Individuals and small business representatives usually request and apply for permits and contracts in person at the office issuing the permit. How requests are made by federally recognized Indian tribes is not specified under section 8105 authority or in the interim direction found in Forest Service ID 2409.18–2013–2. However, pending rulemaking proposes the requests be made in writing.

Applicants provide the following information, as applicable:

- Name,
- Address, and
- Personal identification number such as tax identification number, social

security number, driver's license number, or other unique number identifying the applicant.

Agency personnel enter the information into a computerized database to use for subsequent requests by applicants for a forest product permit or contract. The information is printed on paper, which the applicant signs and dates. Agency personnel discuss the terms and conditions of the permit or contract with the applicant.

The data gathered is not available from other sources. The collected data is used to ensure:

- Applicants for free use permits meet the criteria for free use of timber or forest products authorized by regulations at 36 CFR 223.5–223.13, and/or section 8105 of the 2008 Farm Bill;
- Applicants seeking to purchase and remove timber or forest products from Agency lands meet the criteria under which sale of timber or forest products is authorized by regulations at 36 CFR 223.80; and
- Permittees comply with regulations and terms of the permit at 36 CFR 261.6.

The collection of this information is necessary to ensure that applicants meet the requirements of the forest products program; those obtaining free-use permits for forest products qualify for the program; applicants purchasing non-competitive permits to harvest forest products do not exceed authorized limits; and that Federal Agency employees can identify permittees when in the field.

*Estimate of Annual Burden:* 5 minutes.

*Type of Respondents:* Individuals, small businesses, and, for requests made under section 8105 of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246, 122 Stat. 1651), federally recognized Indian tribes.

*Estimated Annual Number of Respondents:* 212,634.

*Estimated Annual Number of Responses per Respondent:* 2.

*Estimated Total Annual Burden on Respondents:* 35,439.

*Comment is invited on:* (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on

respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: February 13, 2015.

**Leslie A.C. Weldon,**

*Deputy Chief, National Forest System.*

[FR Doc. 2015-03649 Filed 2-23-15; 8:45 am]

**BILLING CODE 3411-15-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-74-2014]

#### **Foreign-Trade Zone 283—Jackson, Tennessee; Authorization of Production Activity MAT Industries, LLC (Air Compressors), Jackson, Tennessee**

On October 14, 2014, MAT Industries, LLC, operator of FTZ 283—Site 11, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility in Jackson, Tennessee.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (79 FR 64167-64168, 10-28-2014). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: February 18, 2015.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2015-03754 Filed 2-23-15; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-75-2014]

#### **Foreign-Trade Zone 119—Minneapolis, Minnesota; Authorization of Production Activity; MAT Industries, LLC (Air Compressors and Pressure Washers); Springfield, Minnesota**

On October 14, 2014, MAT Industries, LLC, an operator of FTZ 119, submitted

a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility in Springfield, Minnesota.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (79 FR 64168, 10-28-2014). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: February 18, 2015.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2015-03774 Filed 2-23-15; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-10-2015]

#### **Foreign-Trade Zone (FTZ) 245—Decatur, Illinois; Notification of Proposed Production Activity; Thyssenkrupp Presta Danville, LLC; (Camshafts); Danville, Illinois**

The Economic Development Corporation of Decatur & Macon County, grantee of FTZ 245, submitted a notification of proposed production activity to the FTZ Board on behalf of Thyssenkrupp Presta Danville, LLC (Thyssenkrupp Presta), located in Danville, Illinois. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on February 18, 2015.

A separate application for subzone designation at the Thyssenkrupp Presta facility was submitted and will be processed under Section 400.31 of the Board's regulations. The facility is used for the production of camshafts for the automotive industry. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Thyssenkrupp Presta from customs duty payments on the foreign status components used in export production. On its domestic sales, Thyssenkrupp Presta would be able to choose the duty rates during customs entry procedures that apply to

camshafts for use with spark-ignition internal combustion piston engines (duty rate 2.5%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Welded, cold-drawn steel tubes; camlobes; nosepieces; sensor rings; sprockets; thrust rings; cap plugs; thrust washers; end plugs; and, end caps (duty rate ranges from duty-free to 2.8%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 6, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the Board's Web site, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

For further information, contact Elizabeth Whiteman at [Elizabeth.Whiteman@trade.gov](mailto:Elizabeth.Whiteman@trade.gov) or (202) 482-0473.

Dated: February 18, 2015.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2015-03771 Filed 2-23-15; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-9-2015]

#### **Foreign-Trade Zone (FTZ) 134—Chattanooga, Tennessee; Notification of Proposed Production Activity; Volkswagen Group of America Chattanooga Operations, LLC; (Motor Vehicles); Chattanooga, Tennessee**

The Chattanooga Chamber Foundation, grantee of FTZ 134, submitted a notification of proposed production activity to the FTZ Board on behalf of Volkswagen Group of America Chattanooga Operations, LLC (VGACO), located in Chattanooga, Tennessee. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on January 23, 2015.

VGACO already has authority to produce passenger sedans, sport utility vehicles, and minivans within Site 3 of FTZ 134. The current request would add certain foreign-status materials and

components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt VGACO from customs duty payments on the foreign status materials and components used in export production. On its domestic sales, VGACO would be able to choose the duty rate during customs entry procedures that applies to passenger motor vehicles (duty rate 2.5%) for the foreign status materials and components noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The materials and components sourced from abroad include: Polyvinyl chloride (PVC) hoses; PVC sheets; adhesive tapes; reeling coils; and, interface USB hubs (duty rate ranges from free to 5.8%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is April 6, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

For further information, contact Pierre Duy at [Pierre.Duy@trade.gov](mailto:Pierre.Duy@trade.gov) or (202) 482-1378.

Dated: February 6, 2015.

**Andrew McGilvray,**  
Executive Secretary.

[FR Doc. 2015-03772 Filed 2-23-15; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-412-801]

#### Ball Bearings and Parts Thereof From the United Kingdom: Amended Final Results of Antidumping Duty Administrative Review; 2010-2011

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is amending its final results in the administrative review of the antidumping duty order on ball bearings and parts thereof from the United Kingdom for the period May 1, 2010, through April 30, 2011, to correct a ministerial error.

**DATES:** *Effective Date:* February 24, 2015.

**FOR FURTHER INFORMATION CONTACT:** Thomas Schauer, 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.

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 27, 2015, the Department published its final results in the administrative review of the antidumping duty order on ball bearings and parts thereof from the United Kingdom.<sup>1</sup> On January 27, 2015, NSK Europe Ltd. and NSK Bearings Europe Ltd. (collectively, NSK), submitted a ministerial error allegation.<sup>2</sup> On February 2, 2015, The Timken Company submitted comments.<sup>3</sup> Based on the analysis of this allegation, we made a change to the calculation of the weighted-average dumping margin for NSK and for certain of the non-individually examined respondents.

##### Scope of the Order

The products covered by the order are ball bearings and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.10, 4016.93.50, 6909.19.50.10, 8414.90.41.75, 8431.20.00, 8431.39.00.10, 8482.10.10,

<sup>1</sup> See *Ball Bearings and Parts Thereof From Japan and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 80 FR 4248 (January 27, 2015) (*Final Results*).

<sup>2</sup> See letter from NSK, "Ball Bearings and Parts from the United Kingdom: Ministerial Error Allegation" (January 27, 2015).

<sup>3</sup> See Letter From Timken, "Ball Bearings and Parts Thereof From the United Kingdom; The Timken Company's Reply to NSK's Ministerial Error Allegation" (February 2, 2015).

8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.25.80, 8482.99.65.95, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.93.30, 8708.93.60.00, 8708.99.06, 8708.99.31.00, 8708.99.40.00, 8708.99.49.60, 8708.99.58, 8708.99.80.15, 8708.99.80.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90, 8708.30.50.90, 8708.40.75.70, 8708.40.75.80, 8708.50.79.00, 8708.50.89.00, 8708.50.91.50, 8708.50.99.00, 8708.70.60.60, 8708.80.65.90, 8708.93.75.00, 8708.94.75, 8708.95.20.00, 8708.99.55.00, 8708.99.68, and 8708.99.81.80.

Although the HTSUS item numbers above are provided for convenience and customs purposes, the written description of the scope of the order remains dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. The order covers all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of the order. For unfinished parts, such parts are included if they have been heat-treated or if heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the order are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the order. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of the order.

##### Ministerial Error

Section 751(h) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.224(f) define a "ministerial error" as an error "in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial."

On January 27, 2015, NSK submitted a ministerial error allegation. After analyzing NSK's allegation, we agree with NSK that we made a ministerial error within the meaning of 19 CFR 351.224(f) by using an incorrect database for NSK's costs, instead of a



revised database for NSK's costs submitted later in the review. Timken argues that the Department should reject NSK's allegation on the grounds that NSK could have raised the allegation in its case brief and it is, therefore, now untimely. Nevertheless, we find that we made an inadvertent error in not using the revised database for NSK's costs and, therefore, are correcting and amending the final results of review in accordance with section 751(h) of the Act and 19 CFR 351.224(e). As a result, the weighted-average dumping margin for NSK changes from 1.55 percent to 1.43 percent. Furthermore, the rate for the respondents not selected for individual examination (except for Bayerische Motoren Werke AG) will be the new rate calculated for NSK, the sole respondent selected for individual examination. The weighted-average dumping margin for Bayerische Motoren Werke AG will remain unchanged from the *Final Results* because it was based on adverse facts available.

#### Amended Final Results of the Review

The Department determines that the following amended weighted-average dumping margins exist for the period May 1, 2010, through April 30, 2011:

Company	Weighted-average dumping margin (percent)
Bayerische Motoren Werke AG ..	254.25
Bosch Rexroth Limited .....	1.43
Caterpillar S.A.R.L .....	1.43
Caterpillar Group Services S.A ..	1.43
Caterpillar of Australia Pty Ltd ...	1.43
Caterpillar Overseas S.A.R.L .....	1.43
Caterpillar Marine Power UK .....	1.43
NSK .....	1.43
Perkins Engines Company Ltd ...	1.43

#### Disclosure

We will disclose the calculation memorandum used in our analysis to parties to this proceeding within five days of the date of the publication of this notice pursuant to 19 CFR 351.224(b).

#### Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for NSK we calculated an importer-specific assessment rate by dividing the total amount of dumping for the reviewed sales by the total entered value of those reviewed sales for each importer.

Consistent with the Department's refinement to its assessment practice,

for entries of subject merchandise during the POR produced by NSK for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate un-examined entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.<sup>4</sup>

For the companies which were not selected for individual examination, we will instruct CBP to assess antidumping duties at a rate equal to the weighted-average dumping margin listed above for all entries of subject merchandise produced and/or exported by such firms.

We intend to issue liquidation instructions to CBP 15 days after publication of the amended final results of this administrative review.

#### Cash Deposit Requirements

Because we revoked the antidumping duty order on ball bearings and parts thereof from the United Kingdom effective September 15, 2011, no cash deposits for estimated antidumping duties on future entries of subject merchandise will be required.<sup>5</sup>

#### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

#### Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

<sup>4</sup> For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

<sup>5</sup> See *Ball Bearings and Parts Thereof From Japan and the United Kingdom: Final Results of Sunset Reviews and Revocation of Antidumping Duty Orders*, 79 FR 16771 (March 26, 2014).

#### Notification to Interested Parties

We are issuing and publishing these amended final results in accordance with section 751(h) of the Act and 19 CFR 351.224(f).

Dated: February 18, 2015.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2015-03770 Filed 2-23-15; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-912]

#### Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2013-2014

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On October 30, 2014, the Department of Commerce ("Department") initiated an administrative review of the antidumping duty order on new pneumatic off-the-road tires ("OTR tires") from the People's Republic of China ("PRC") for 12 companies.<sup>1</sup> Based on timely withdrawal of requests for review, we are now rescinding this administrative review with respect to Double Coin Holdings Ltd., Guizhou Tyre Co., Ltd., and Guizhou Tyre Import and Export Co., Ltd.

**DATES:** *Effective Date:* February 24, 2015.

**FOR FURTHER INFORMATION CONTACT:** Andrew Medley, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-4987.

#### Background

In September 2014, the Department received multiple timely requests to conduct an administrative review of the antidumping duty order on OTR tires from the PRC. Based upon these requests, on October 30, 2014, the Department published a notice of initiation of an administrative review covering the period of September 1, 2013, to August 31, 2014, with respect

<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 64565 (October 30, 2014) at 64567.

to 12 companies.<sup>2</sup> On November 20, 2014, Double Coin Holdings Ltd. (“Double Coin”) and China Manufacturers Alliance withdrew their request for review of Double Coin.<sup>3</sup> On December 17, 2014, Guizhou Tyre Co., Ltd. and Guizhou Tyre Import and Export Co., Ltd. (collectively, “GTC”) withdrew their request for review.<sup>4</sup>

#### Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90-days of the date of publication of notice of initiation of the requested review. Double Coin and GTC timely withdrew their requests for an administrative review on themselves; no other party requested a review of these companies.<sup>5</sup> Accordingly, we are rescinding this review, in part, with respect to these companies, pursuant to 19 CFR 351.213(d)(1).

#### Assessment

The Department will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

#### Notification to Importers

This notice serves as the only reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate

regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary’s presumption that reimbursement of the antidumping and/or countervailing duties occurred and the subsequent assessment of double and/or increased antidumping duties.

#### Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (“APO”) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

#### Notification to Interested Parties

This notice is issued and published in accordance with sections 751 and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: February 18, 2015.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2015-03765 Filed 2-23-15; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[Application No. 14-00002]

#### Export Trade Certificate of Review

**ACTION:** Notice of Issuance for an Export Trade Certificate of Review for JDE USA LLC (“JDE”), Application no. 14-00002.

**SUMMARY:** The Office of Trade and Economic Analysis (“OTEA”) of the International Trade Administration, Department of Commerce, issued an Export Trade Certificate of Review (“Certificate”) to JDE USA LLC on January 28, 2015.

**FOR FURTHER INFORMATION CONTACT:** Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or email at [etca@trade.gov](mailto:etca@trade.gov).

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

#### Description of Certified Conduct

JDE USA LLC (“JDE”) is certified to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets.

#### Export Trade

*Products:* All Products.

*Services:* All services related to the export of Products.

*Technology Rights:* All intellectual property rights associated with Products or Services, including, but not limited to: Patents, trademarks, services marks, trade names, copyrights, neighboring (related) rights, trade secrets, know-how, and confidential databases and computer programs.

*Export Trade Facilitation Services (as They Relate to the Export of Products):* Export Trade Facilitation Services, including but not limited to: Consulting and trade strategy, arranging and coordinating delivery of Products to the port of export; arranging for inland and/or ocean transportation; allocating Products to vessel; arranging for storage space at port; arranging for warehousing, stevedoring, wharfage, handling, inspection, fumigation, and freight forwarding; insurance and financing; documentation and services related to compliance with customs’ requirements; sales and marketing; export brokerage; foreign marketing and analysis; foreign market development; overseas advertising and promotion; Products-related research and design based upon foreign buyer and consumer preferences; inspection and quality control; shipping and export management; export licensing; provisions of overseas sales and distribution facilities and overseas sales staff; legal, accounting and tax assistance; development and application of management information systems;

<sup>2</sup> *Id.*

<sup>3</sup> See Letter from Double Coin titled “Double Coin’s Withdrawal of Request for Antidumping Administrative Review: Certain New Pneumatic Off-the-Road Tires from China,” dated November 20, 2014.

<sup>4</sup> See Letter from GTC titled “GTC Withdrawal of Request for Administrative Review: Sixth Administrative Review of Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires From The People’s Republic Of China (Case No: A-570-912) (POR: September 1, 2013–August 31, 2014),” dated December 17, 2014.

<sup>5</sup> The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013) at 65970.

trade show exhibitions; professional services in the area of government relations and assistance with federal and state export assistance programs; invoicing (billing) foreign buyers; collecting (letters of credit and other financial instruments) payment for Products; and arranging for payment of applicable commissions and fees.

#### Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

#### Export Trade Activities and Methods of Operations

To engage in Export Trade in the Export Markets, JDE may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;
3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products and Services, and/or Technology Rights to Export Markets;
4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;
5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products and Services and/or Technology Rights;
6. Allocate export orders among Suppliers;
7. Establish the price of Products and Services and/or Technology Rights for sales and/or licensing in Export Markets; and
8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights.
9. Exchange information with individual Suppliers on a one-to-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by JDE with its distributors in Export Markets.

#### Definition

“Supplier” means a person who produces, provides, or sells Products, Services, and/or Technology Rights.

Dated: February 5, 2015.

**Joseph Flynn,**

*Director, Office of Trade and Economic Analysis, International Trade Administration.*

[FR Doc. 2015-03755 Filed 2-23-15; 8:45 am]

**BILLING CODE 3510-DR-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Renewable Energy And Energy Efficiency Advisory Committee

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of an Open Meeting.

**SUMMARY:** The Renewable Energy and Energy Efficiency Advisory Committee (RE&EEAC) will hold a meeting on Wednesday, March 12, 2015 at the Department of Commerce Herbert C. Hoover Building in Washington, DC. The meeting is open to the public and interested parties are requested to contact the Department of Commerce in advance of the meeting.

**DATES:** March 12, 2015, from approximately 8:30 a.m. to 4 p.m. Daylight Saving Time (DST). Members of the public wishing to participate must notify Andrew Bennett at the contact information below by 5:00 p.m. DST on Monday, March 9, 2015, in order to pre-register.

**FOR FURTHER INFORMATION CONTACT:** Andrew Bennett, Office of Energy and Environmental Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482-5235; email: [Andrew.Bennett@trade.gov](mailto:Andrew.Bennett@trade.gov).

#### SUPPLEMENTARY INFORMATION:

*Background:* The Secretary of Commerce established the RE&EEAC pursuant to his discretionary authority and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) on July 14, 2010. The RE&EEAC was re-chartered on June 12, 2014. The RE&EEAC provides the Secretary of Commerce with consensus advice from the private sector on the development and administration of programs and policies to enhance the international competitiveness of the U.S. renewable energy and energy efficiency industries.

During the March 12th meeting of the RE&EEAC, committee members will discuss priority issues identified in advance by the Committee Chair and hear from interagency partners on issues impacting the competitiveness of the U.S. Renewable Energy and Energy Efficiency industries.

A limited amount of time before the close of the meeting will be available for pertinent oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two to five minutes per person (depending on number of public participants). Individuals wishing to reserve additional speaking time during the meeting must contact Mr. Bennett and submit a brief statement of the general nature of the comments, as well as the name and address of the proposed participant by 5:00 p.m. DST on Friday, March 6, 2015. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the teleconference, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a copy of their oral comments by email to Mr. Bennett for distribution to the participants in advance of the teleconference.

Any member of the public may submit pertinent written comments concerning the RE&EEAC's affairs at any time before or after the meeting. Comments may be submitted to the Renewable Energy and Energy Efficiency Advisory Committee, c/o: Andrew Bennett, Office of Energy and Environmental Industries, U.S. Department of Commerce, Mail Stop: 4053, 1401 Constitution Avenue NW., Washington, DC 20230. To be considered during the meeting, written comments must be received no later than 5:00 p.m. DST on Friday, March 6, 2015, to ensure transmission to the Committee prior to the teleconference. Comments received after that date will be distributed to the members but may not be considered on the teleconference.

Copies of RE&EEAC meeting minutes will be available within 30 days following the meeting.

Dated: February 12, 2015.

**Edward A. O'Malley,**

*Director, Office of Energy and Environmental Industries.*

[FR Doc. 2015-03756 Filed 2-23-15; 8:45 am]

**BILLING CODE 3510-DR-P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### National Institute of Standards and Technology (NIST) Smart Grid Advisory Committee Meeting

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The National Institute of Standards and Technology (NIST) Smart Grid Advisory Committee (SGAC or Committee), will meet in open session on Tuesday, March 10, 2015 from 8:30 a.m. to 5:00 p.m. Eastern time and Wednesday, March 11, 2015 from 8:30 a.m. to 12:00 p.m. Eastern time. The primary purposes of this meeting are to discuss the Grid 3.0 Strategic Planning Effort and NIST Transactive Energy, Distributed Energy Resources, Microgrid, and Smart City activities. The agenda may change to accommodate Committee business. The final agenda will be posted on the Smart Grid Web site at <http://www.nist.gov/smartgrid>.

**DATES:** The SGAC will meet on Tuesday, March 10, 2015 from 8:30 a.m. to 5:00 p.m. Eastern time and Wednesday, March 11, 2015 from 8:30 a.m. to 12:00 p.m. Eastern time.

**ADDRESSES:** The meeting will be held in Conference Room B205, Building 226 (Building Research), National Institute of Standards and Technology (NIST), 100 Bureau Drive, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Mr. Cuong Nguyen, Smart Grid and Cyber-Physical Systems Program Office, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8200, Gaithersburg, MD 20899-8200; telephone 301-975-2254, fax 301-948-5668; or via email at [cuong.nguyen@nist.gov](mailto:cuong.nguyen@nist.gov).

**SUPPLEMENTARY INFORMATION:** The Committee was established in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Committee is composed of nine to fifteen members, appointed by the Director of NIST, who were selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting Smart Grid deployment and operations. The Committee advises the Director of NIST in carrying out duties authorized by section 1305 of the Energy Independence and Security Act of 2007 (Pub. L. 110-140). The Committee provides input to NIST on Smart Grid standards, priorities, and gaps, on the overall direction, status, and health of the Smart Grid implementation by the Smart Grid industry, and on Smart Grid Interoperability Panel activities, including the direction of research and standards activities. Background information on the Committee is

available at <http://www.nist.gov/smartgrid/committee.cfm>.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the NIST Smart Grid Advisory Committee (SGAC or Committee) will meet in open session on Tuesday, March 10, 2015 from 8:30 a.m. to 5:00 p.m. Eastern time and Wednesday, March 11, 2015 from 8:30 a.m. to 12:00 p.m. Eastern time. The meeting will be open to the public and held in the Conference Room B205, Building 226 (Building Research) at NIST in Gaithersburg, Maryland. The primary purposes of this meeting are to discuss the Grid 3.0 Strategic Planning Effort and NIST Transactive Energy, Distributed Energy Resources, Microgrid, and Smart City activities. The agenda may change to accommodate Committee business. The final agenda will be posted on the Smart Grid Web site at <http://www.nist.gov/smartgrid>.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda by submitting their request to Cuong Nguyen at [cuong.nguyen@nist.gov](mailto:cuong.nguyen@nist.gov) or (301) 975-2254 no later than 5:00 p.m. Eastern time, Friday, February 27, 2015. On Wednesday, March 11, 2015, approximately one-half hour will be reserved at the end of the meeting for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about three minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to Mr. Cuong Nguyen, Smart Grid and Cyber-Physical Systems Program Office, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8200, Gaithersburg, MD 20899-8200; telephone 301-975-2254, fax 301-948-5668; or via email at [cuong.nguyen@nist.gov](mailto:cuong.nguyen@nist.gov).

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by 5:00 p.m. Eastern time, Friday, February 27, 2015, in order to attend. Please submit your full name, time of arrival, email address, and phone number to Cuong Nguyen. Non-U.S. citizens must submit additional information; please contact Mr. Nguyen.

Mr. Nguyen's email address is [cuong.nguyen@nist.gov](mailto:cuong.nguyen@nist.gov) and his phone number is (301) 975-2254. Also, please note that under the REAL ID Act of 2005 (Pub. L. 109-13), federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if issued by states that are REAL ID compliant or have an extension. NIST also currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please contact Mr. Nguyen or visit: [http://www.nist.gov/public\\_affairs/visitor/](http://www.nist.gov/public_affairs/visitor/).

**Kevin Kimball,**  
Chief of Staff.

[FR Doc. 2015-03831 Filed 2-20-15; 11:15 am]

**BILLING CODE 3510-13-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Documentation of Fish Harvest

**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 April 27, 2015.

**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](mailto:Jjessup@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Anik Clemens, (727) 551-5611 or [anik.clemens@noaa.gov](mailto:anik.clemens@noaa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Abstract**

This request is for extension of a currently approved information collection.

The seafood dealers who process red porgy, gag, black grouper, or greater

amberjack during seasonal fishery closures must maintain documentation, as specified in 50 CFR part 300 subpart K, that such fish were harvested from areas other than the South Atlantic. The documentation includes information on the vessel that harvested the fish and on where and when the fish were offloaded. The information is required for the enforcement of fishery regulations.

## II. Method of Collection

The information is in the form of a paper affidavit which remains with the respondent.

## III. Data

*OMB Control Number:* 0648–0365.

*Form Number:* None.

*Type of Review:* Regular submission (extension of a currently approved collection).

*Affected Public:* Businesses or other for-profit organizations; individuals or households.

*Estimated Number of Respondents:* 25.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 50.

*Estimated Total Annual Cost to Public:* \$0.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2015–03698 Filed 2–23–15; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD786**

### Gulf of Mexico Fishery Management Council; Public Meetings

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

**ACTION:** Notice; public meetings.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will hold a meeting of its Standing, Special Reef Fish, Special Shrimp and Special Spiny Lobster Scientific and Statistical Committees (SSC).

**DATES:** The meeting will convene at 1 p.m. Tuesday, March 10, 2015 and conclude by 12 noon on Thursday, March 12, 2015.

**ADDRESSES:** The meeting will be held at the Gulf of Mexico Fishery Management Council office, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Atran, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: [steven.atran@gulfcouncil.org](mailto:steven.atran@gulfcouncil.org).

**SUPPLEMENTARY INFORMATION:** The items of discussion in the individual meeting agenda are as follows:

### Standing, Special Shrimp and Special Spiny Lobster SSC Agenda, Tuesday, March 10, 2015, 1 p.m. Until 5:30 p.m.

- I. Introductions and Adoption of Agenda
- II. Approval of Minutes
  - a. August 2014 Standing and Special Shrimp SSC
  - b. January 2011 Standing, Special Spiny Lobster and Special Reef Fish SSC
- III. Selection of SSC representative at March, 2015 Council meeting
- IV. Report on the MSY ABC Control Rule Workshop for Penaeid Shrimp
  - a. AP recommendations
  - b. Shrimp 15 implications
- V. Shrimp Amendment 17
  - a. Working Group recommendations
  - b. AP recommendations
- VI. Spiny Lobster 2013–14 Landings
  - a. Report on Review Panel for Spiny Lobster

### Standing, Special Reef Fish SSC Agenda, Wednesday, March 11, 2015, 8:30 a.m. Until 5 p.m. and Thursday, March 12, 2015, 8:30 a.m. Until 12 Noon—If Needed

- VII. Approval of Minutes

- a. January 2014 Standing and Special Reef Fish SSC
- b. January 2011 Standing, Special Spiny Lobster and Special Reef Fish SSC
- VIII. Reorganization of SSCs as approved by Council
- IX. FWC Mutton Snapper Update Assessment
- X. Hogfish OFL and ABC
  - a. OFL and ABC recommendations for Gulf stock
- XI. Minimum Stock Size Threshold Amendment
- XII. SEDAR 45 vermilion snapper Terms of Reference and Project Schedule
- XIII. Review of draft National Standard 1 Guideline revisions
- XIV. Review of NMFS Climate Change Strategy
- XV. National SSC Workshop V Summary
- XVI. Ecosystem Working Group Summary
  - a. Ecosystem SSC recommendations
- XVII. Other Business  
—Adjourn—

The Agenda is subject to change, and the latest version will be posted on the Council's file server. To access the file server, the URL is <https://public.gulfcouncil.org:5001/webman/index.cgi>, or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (<http://www.gulfcouncil.org>). The username and password are both "gulfguest". Click on the "Library Folder", then scroll down to "SSC meeting—2015–03".

The meeting 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 other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda 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 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: February 19, 2015.

**Tracey L. Thompson,**

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

[FR Doc. 2015-03701 Filed 2-23-15; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XD785

#### Gulf of Mexico Fishery Management Council; Public Meeting

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

**ACTION:** Notice; public meetings.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will hold scoping workshops for Reef Fish Amendment 36.

**DATES:** The scoping meetings will be held from Tuesday, March 10 through Tuesday, March 24, 2015 at seven locations throughout the Gulf of Mexico. The scoping meetings will begin at 6 p.m. and will conclude no later than 9 p.m. For specific dates and locations see **SUPPLEMENTARY INFORMATION** below.

**ADDRESSES:**

*Meeting address:* The public hearings will be held in the following locations: Mobile, AL; Pascagoula, MS; Panama City Beach and St. Petersburg, FL; Houma, LA; and Galveston and Port Aransas, TX.

*Council address:* Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ava Lasseter, Anthropologist, Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630; fax: (813) 348-1711; email: [ava.lasseter@gulfcouncil.org](mailto:ava.lasseter@gulfcouncil.org).

**SUPPLEMENTARY INFORMATION:** The items of discussion in the public hearings are as follows:

The Council is examining a broad scope of potential modifications to the Red Snapper Individual Fishing Quota (IFQ) program. These include changes to the program's eligibility requirements;

redistribution of shares held in inactive accounts to address regulatory discards; consideration of a full retention commercial fishery for red snapper; exploring share, allocation, and vessel caps on quota; requirements for the use of shares and/or allocation; withholding full distribution of shares in the event of an anticipated mid-year quota change; and increasing enforcement of all commercial reef fish landings. Although this action focuses on red snapper specifically, the implication of Red Snapper IFQ program changes on the Grouper-Tilefish IFQ program, and other potential issues with in the Grouper-Tilefish IFQ program will also be discussed.

The scoping workshops will begin at 6 p.m. and conclude at the end of public testimony or no later than 9 p.m. at the following locations:

Tuesday, March 10, 2015, Courtyard Marriott, 142 Library Drive, Houma, LA 70360, telephone: (985) 223-8996;

Thursday, March 12, 2015, Hilton Garden Inn, 6703 Denny Avenue, Pascagoula, MS 39567, telephone: (228) 762-7182;

Monday, March 16, 2015, Hilton Galveston Island Hotel, 5400 Seawall Boulevard, Galveston Island, TX 77551, telephone: (409) 744-5000;

Tuesday, March 17, 2015, Hawthorn Suites by Wyndham, 501 East Goodnight Avenue, Aransas Pass, TX 78336, telephone: (361) 758-1774; Renaissance Mobile Riverview Plaza Hotel, 64 South Water Street, Mobile, AL 36602, telephone: (251) 438-4000;

Wednesday, March 18, 2015, Hilton Garden Inn, 1101 US Highway 231, Panama City, FL 32405, telephone: (850) 392-1093; and

Tuesday, March 24, 2015, Hilton St. Petersburg Carillon Park, 950 Lake Carillon Drive, St. Petersburg, FL 33716, telephone: (727) 540-0050.

Copies of the scoping workshop documents can be obtained by calling (813) 348-1630 or visiting [www.GulfCouncil.org](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: February 19, 2015.

**Tracey L. Thompson,**

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

[FR Doc. 2015-03700 Filed 2-23-15; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XD783

#### Peer Review Meeting To Review Sea Scallop Survey Methods

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

**ACTION:** Notice of public meeting.

**SUMMARY:** NMFS and the Northeast Regional Science Center (NEFSC) will convene a Peer Review meeting for the purpose of a review of the survey methods for the Sea Scallop. The scope of the review is broad and includes the statistical design and data collection methods and procedures for several survey systems, including scallop dredges, video drop cameras, and HabCam. The objectives of this review will be to assess the relative merits of each sampling method, to identify complementary aspects among the survey methodologies, and to determine areas of future research and collaboration. The public is invited to attend the presentations and discussions.

**DATES:** The public meeting will be held from March 17 through March 19, 2015. The meeting will commence on March 17, 2015 at 9 a.m. Eastern Standard Time. See **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

**ADDRESSES:** The meeting will be held at the Waypoint Event Center at the Marriott Fairfield Inn and Suites, 185 MacArthur Drive, New Bedford, MA 02740.

**FOR FURTHER INFORMATION CONTACT:**

James Weinberg, 508-495-2352; email: [James.Weinberg@noaa.gov](mailto:James.Weinberg@noaa.gov).

**SUPPLEMENTARY INFORMATION:** For further information please visit the Northeast Fisheries Science Center Web site at <http://nefsc.noaa.gov/>. For additional information about the peer review meeting of the Sea Scallop, please visit the NMFS NEFSC SAW Web site at <http://www.nefsc.noaa.gov/nefsc/saw/>.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to James Weinberg at the NEFSC, (508) 495-2352, at least 5 days prior to the meeting date.

Dated: February 18, 2015.

**Tracey L. Thompson,**

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

[FR Doc. 2015-03671 Filed 2-23-15; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

**RIN 0648-XD787**

**Western Pacific Fishery Management Council; Public Meetings**

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

**ACTION:** Notice of public meetings and hearings.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will hold meetings of its American Samoa, Hawaii, and Mariana Archipelago Fishery Ecosystem Plan (FEP) Advisory Panels (AP) by teleconference and webconference to discuss and make recommendations on fishery management issues in the Western Pacific Region.

**DATES:** The Mariana Archipelago FEP AP will meet on March 10, 2015, between 5 p.m. and 7 p.m.; The Hawaii Archipelago FEP AP will meet on March 12, 2015, between 4 p.m. and 6 p.m.; and The American Samoa Archipelago FEP AP will meet on March 13, 2015, between 4 p.m. and 6 p.m. All times listed are local island times.

*Location:* All meetings will be held by teleconference and webconference. For specific times and agendas, see

**SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The teleconference will be conducted by telephone and by web. The teleconference numbers are: U.S. toll-free: 1-888-482-3560 or International Access: +1 647 723-3959, and Access Code: 5228220. The webconference can be accessed at <https://wprfmc.webex.com/join/info.wpcouncilnoaa.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Kitty M. Simonds, Executive Director; telephone: (808) 522-8220.

**SUPPLEMENTARY INFORMATION:** Public comment periods will be provided throughout the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

**Schedule and Agenda for the Mariana Archipelago FEP AP Meeting**

*5 p.m.-7 p.m., Tuesday, March 10, 2015*

1. Welcome and Introductions
2. Review and Approval of the Agenda
3. New Advisory Panel Structure and Process
4. Meeting Expectations and Overview
5. Issues to be discussed at 162nd Council Meeting
  - A. Council Action Items
    - i. Recommendations on Territory Longline Bigeye Specification
    - ii. Report on FEP Review
  - B. Issues Relevant to the FEP AP
    - i. Update on Data Collection Projects
    - ii. Update on Community Activities
    - iii. Education and Outreach Initiatives
6. Mariana Archipelago FEP AP Issues
  - A. Island Fisheries Subpanel
  - B. Pelagic Fisheries Subpanel
  - C. Ecosystems and Habitat Subpanel
  - D. Indigenous Fishing Rights Subpanel
7. Public Comment
8. Discussion of Solutions to Issues
9. Recommendations to the Council
10. Other Business

**Schedule and Agenda for the Hawaii Archipelago FEP AP**

*4 p.m.-6 p.m., Thursday, March 12, 2015*

1. Welcome and Introductions
2. Review and Approval of the Agenda
3. New Advisory Panel Structure and Process
4. Meeting Expectations and Overview
5. Issues to be discussed at 162nd Council Meeting
  - A. Council Action Items
    - i. Recommendations on Territory Longline Bigeye Specification
    - ii. Report on FEP Review
  - B. Issues Relevant to the FEP AP
    - i. Report on Main Hawaiian Islands (MHI) Bottomfish Public Scoping Meetings

- ii. Report on MHI Ahi (Yellowfin Tuna) Public Scoping Meetings
  - iii. Update on Community Projects
  - iv. Education and Outreach Initiatives
6. Hawaii Archipelago FEP AP Issues
    - A. Island Fisheries Subpanel
    - B. Pelagic Fisheries Subpanel
    - C. Ecosystems and Habitat Subpanel
    - D. Indigenous Fishing Rights Subpanel
  7. Public Comment
  8. Discussion of Solutions to Issues
  9. Recommendations to the Council
  10. Other Business

**Schedule and Agenda for the American Samoa Archipelago FEP AP Meeting**

*4 p.m.-6 p.m., March 13, 2016*

1. Welcome and Introductions
  2. Review and Approval of the Agenda
  3. New Advisory Panel Structure and Process
  4. Meeting Expectations and Overview
  5. Issues to be Discussed at 162nd Council Meeting
    - A. Council Action Items
      - i. Recommendations on the American Samoa Large Vessel Prohibited Area Temporary Exemption
      - ii. Recommendations on American Samoa Longline EEZ Albacore Catch Limit
      - iii. Recommendations on Territory Longline Bigeye Specification
    - iv. Report on FEP Review
  - B. Issues Relevant to the FEP AP
    - i. Update on Data Collection Projects
    - ii. Update on Fisheries Development Projects
    - iii. Education and Outreach Initiatives
6. American Samoa Archipelago FEP AP Issues
    - A. Island Fisheries Subpanel
    - B. Pelagic Fisheries Subpanel
    - C. Ecosystems and Habitat Subpanel
    - D. Indigenous Fishing Rights Subpanel
  7. Public Comment
  8. Discussion of Solutions to Issues
  9. Recommendations to the Council
  10. Other Business

Non-Emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 161st meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take 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 Kitty M. Simonds, (808) 522-8220 (voice) or (808) 522-8226 (fax), at least 5 days prior to the meeting date.

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

Dated: February 19, 2015.

**Tracey L. Thompson,**

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

[FR Doc. 2015-03715 Filed 2-23-15; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XD788

#### North Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council (Council) Ecosystem Committee will meet in Seattle, WA.

**DATES:** The meeting will be held March 17-18, 2015, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at The Mountaineers Seattle Program Center, 7700 Sand Point Way NE., Cascade Room, Seattle, WA. Teleconference will be available by calling (712) 775-7031, access code 403-899-011.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

**FOR FURTHER INFORMATION CONTACT:** Steve MacLean, Council staff; telephone: (907) 271-2809.

**SUPPLEMENTARY INFORMATION:** The Committee will discuss the following issues: (1) Ecosystem Vision Statement; (2) updates on Essential Fish Habitat 5-year review, Norton Sound king crab research, deep-sea corals research, Bering Strait Marine Life and Subsistence Data Synthesis, Aleutian Islands Risk Assessment, Arctic and Bering Sea shipping, Alaska Arctic Policy Commission final report, AOOS ocean acidification workshop; (3) Bering Sea Fishery Ecosystem Plan.

The Agenda is subject to change, and the latest version is posted at <http://www.npfmc.org/committees/ecosystem-committee/>.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271-2809 at least 7 working days prior to the meeting date.

Dated: February 19, 2015.

**Tracey L. Thompson,**

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

[FR Doc. 2015-03716 Filed 2-23-15; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Reserve Forces Policy Board; Notice of Federal Advisory Committee Meeting

**AGENCY:** Reserve Forces Policy Board, Office of the Secretary of Defense, DoD.

**ACTION:** Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Reserve Forces Policy Board (RFPB) will take place. This meeting will be partially-closed to the public.

**DATES:** Wednesday, March 11, 2015 from 8:20 a.m. to 4:05 p.m.

**ADDRESSES:** The address is the Pentagon, Room 3E863, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alex Sabol, Designated Federal Officer, (703) 681-0577 (Voice), (703) 681-0002 (Facsimile), Email—[Alexander.j.sabol.civ@mail.mil](mailto:Alexander.j.sabol.civ@mail.mil). Mailing address is Reserve Forces Policy Board, 5113 Leesburg Pike, Suite 601, Falls Church, VA 22041. Web site: <http://rfpb.defense.gov/>. The most up-to-date changes to the meeting can be found on the RFPB's Web site.

**SUPPLEMENTARY INFORMATION:** This meeting notice is being published under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (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.

*Purpose of the Meeting:* The purpose of the meeting is to obtain, review and evaluate information related to strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the Reserve Components.

*Agenda:* The RFPB will hold a meeting from 8:20 a.m. until 4:05 p.m. The portion of the meeting from 8:20 a.m. to 11:45 a.m. will be open to the public and will consist of remarks to the RFPB from the Under Secretary of Defense (Personnel & Readiness), the Military Compensation and Retirement Modernization Commission (“the Commission”), two RFPB subcommittees, and Mr. Sergio Pecori, a RFPB member. The Under Secretary of Defense (P&R) Reorganization will provide updates on the Department of Defense Under Secretary of Defense (P&R) reorganization, and the possible impact that it will have on the support of National Guard and Reserve requirements. The Executive Director of the Military Compensation and Retirement Modernization Commission will discuss the findings of facts and recommendations presented in the Commission’s final report to the President. Two RFPB subcommittee chairs will provide updates on the work of their respective subcommittee. The Enhancing DoD’s Role in the Homeland Subcommittee will provide updates on the Department of Defense support of civil authorities and FEMA requirements. The Supporting & Sustaining Reserve Component Personnel Subcommittee will provide updates on the Survivor Benefits Program, the Post 9/11 GI Bill Change Proposal, and the Duty Status recommendations to the Secretary of Defense. Mr. Sergio Pecori, a RFPB member will discuss his thoughts on the DoD Cyber approach. The portion of the meeting from 11:55 a.m. to 4:05 p.m. will be closed to the public and will consist of remarks to the RFPB from invited speakers that include the Deputy Secretary of Defense; the Commander, U.S. Northern Command; and the Principle Director, Cost Assessment and Program Evaluation; and Brig Gen Whitman, a RFPB member. The Deputy Secretary of Defense will discuss the future strategies for Reserve Component use, highlighting his thoughts on issues impacting reserve organizations, the right balances of Active and Reserve Component forces, and the cost to maintain a strong Reserve Component. The Commander, U.S. Northern Command will discuss the readiness, availability, and use of the National Guard and Reserve within Northern Command, and his thoughts on his command’s increased emphasis on homeland security missions fit for Reserve Component members. The Principle Director, Cost Assessment and Program Evaluation will brief the findings and recommendations on the



Active Component/Reserve Component cost, force mix, and their use to address national security challenges in a constrained fiscal environment. Brig Gen Whitman, a RFPB member will discuss his observations on his recent deployment to Afghanistan.

**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 from 8:20 a.m. to 11:45 a.m. Seating is based on a first-come, first-served basis. All members of the public who wish to attend the public meeting must contact Mr. Alex Sabol, the Designated Federal Officer, not later than 12:00 p.m. on Wednesday, March 4, 2015, as listed in the **FOR FURTHER INFORMATION CONTACT** section. An escort may be required for attendees without appropriate DoD badges. In accordance with section 10(d) of the FACA, 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the portion of this meeting scheduled to occur from 11:55 a.m. to 4:05 p.m. will be closed to the public. Specifically, the Under Secretary of Defense (Personnel and Readiness), in coordination with the DoD FACA Attorney, has determined in writing that this portion of the meeting will be closed to the public because it is likely to disclose classified matters covered by 5 U.S.C. 552b(c)(1).

**Written Statements:** Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, interested persons may submit written statements to the RFPB at any time about its approved agenda or the Board's mission. Written statements should be submitted to the RFPB's Designated Federal Officer at the address or facsimile number listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the RFPB until its next meeting. The Designated Federal Officer will review all timely submitted written statements and provide copies to all the committee members before the meeting that is the subject of this notice. Please note that since the RFPB operates under the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the RFPB's Web site.

Dated: February 19, 2015.

**Aaron Siegel,**

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

[FR Doc. 2015–03712 Filed 2–23–15; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0160]

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Teacher Cancellation Low Income Directory

**AGENCY:** Federal Student Aid (FSA), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before March 26, 2015.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED–2014–ICCD–0160 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Tammy Gay, 816–268–0432.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of

information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Teacher

Cancellation Low Income Directory.

*OMB Control Number:* 1845–0077.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* State, Local or Tribal Governments.

*Total Estimated Number of Annual Responses:* 57.

*Total Estimated Number of Annual Burden Hours:* 6,840.

**Abstract:** The Teacher Cancellation Low Income (TCLI) Directory is the on-line data repository of elementary and secondary schools and educational service agencies that serve low-income families. State and Territory agencies report these schools to the TCLI Directory. The purpose of the TCLI Directory is to provide a single location for the public to find the list of schools and educational service agencies that are reported. By teaching at one of these schools, recipients of Federal student loans may qualify for loan cancellation as provided under Title I of the Elementary and Secondary Education Act of 1965. Additionally teaching at one of these schools is a requirement for the TEACH Grant program. Institutions of higher education as well as the Department use the TCLI Directory to assist students in determining if the schools they may teach at upon completing their degrees meet the qualifications for receiving the loan cancellations or receiving the TEACH Grant as grant funds.

Dated: February 19, 2015.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2015-03709 Filed 2-23-15; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### Clean Energy Manufacturing Innovation Institute on Smart Manufacturing Industry Day Workshop

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

**ACTION:** Notice of Open Meeting: Clean Energy Manufacturing Innovation Institute on Smart Manufacturing Industry Day Workshop.

**SUMMARY:** The Department of Energy (DOE) is announcing the following public workshop entitled, "Clean Energy Manufacturing Innovation Institute on Smart Manufacturing Industry Day Workshop." The intent is to discuss the specifics of the previously announced potential investment in SMART Manufacturing.

**DATES:** The public workshop will be held on Wednesday, February 25, 2015, 8:30 a.m.–4:30 p.m. at the Georgia Tech Global Learning Center.

**ADDRESSES:** The meeting location is: 84 5th St. NW., Atlanta, GA 30308.

**FOR FURTHER INFORMATION CONTACT:** Questions may be directed to—David Hardy at 202-586-8092 or by email at [david.hardy@ee.doe.gov](mailto:david.hardy@ee.doe.gov).

#### **SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* The purpose of this workshop is to bring together parties interested in responding to the upcoming Funding Opportunity Announcement (FOA) for the Clean Energy Manufacturing Innovation Institute on Smart Manufacturing. Smart Manufacturing represents an emerging opportunity faced broadly by the U.S. manufacturing sector to merge information and communications technologies with the manufacturing environment for the real-time management of energy, productivity, and costs in American factories all across the country. Smart Manufacturing was recently identified by private sector and university leaders in the White House's Advanced Manufacturing Partnership 2.0 as one of the highest priority manufacturing technology areas in need of federal

investment. Participants will hear presentations from government officials about the framework for the Institute, specific technical topic areas of interest, and anticipated proposal requirements; be provided an opportunity to ask questions about the Institute and the FOA; and have opportunity for networking discussions with other potential collaborators. DOE previously posted an associated Notice of Intent (NOI) entitled "Clean Energy Manufacturing Innovation Institute on Smart Manufacturing: Advanced Sensors, Controls, Platforms and Modeling for Manufacturing" regarding the planned competition on December 11, 2014.

*Public Participation:* Members of the public are welcome to attend the workshop. Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by 4 p.m., February 23. Early registration is recommended because facilities are limited and, therefore, DOE may limit the number of participants from each organization. If time and space permit, onsite registration on the day of the public workshop will be provided beginning at 8:30 a.m. To register for the public workshop, please visit <https://www.eventbrite.com/e/industry-day-tickets-15743251489>. Registrants will receive confirmation after they have been accepted. If you need special accommodations due to a disability, please contact Kendra Pierson, 678-478-2030, email: [Kendra@tcgconsultinginc.com](mailto:Kendra@tcgconsultinginc.com), no later than February 23, 2015.

Issued in Washington, DC, on February 12, 2015.

**Mark J. Shuart,**

*R&D Facilities Program Manager, Advance Manufacturing Office.*

[FR Doc. 2015-03456 Filed 2-23-15; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 14657-000]

#### **Appalachian Mountain Club; Notice of Application Accepted for Filing, Intent To Waive Scoping, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, Prescriptions, and Establishing an Expedited Schedule for Processing**

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 14657-000.

c. *Date filed:* December 29, 2014.

d. *Applicant:* Appalachian Mountain Club.

e. *Name of Project:* Zealand Falls Hydroelectric Project.

f. *Location:* On Whitehall Brook, in the Town of Bethlehem, Grafton County, New Hampshire. The project occupies 0.66 acres of federal land managed by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* James Wrigley, Appalachian Mountain Club, PO Box 298, Gorham, New Hampshire 03581, (603) 466-8110; [jwrigley@outdoors.org](mailto:jwrigley@outdoors.org).

i. *FERC Contact:* John Baummer, (202) 502-6837, or email at [john.baummer@ferc.gov](mailto:john.baummer@ferc.gov).

j. *Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions:* 30 days from the issuance date of this notice; reply comments are due 45 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-14657-000.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The existing, unlicensed Zealand Falls Hydroelectric Project consists of: (1) A 27-foot-long, 3-inch diameter intake pipe with a 1/8-inch welded wire debris screen; (2) a 50.5-inch-long, 26.5-inch-wide, 31-inch-high settling tank; (3) a 1,374-foot-long penstock consisting of a 970-foot-long, 3-inch-diameter section connected to a 404-foot-long, 2-inch diameter section; (4) a 47.75-inch-wide, 41.25-inch-long generator shed; (5) a single turbine-generator unit with an installed capacity of 2.5 kilowatts; (6) a 6.5-foot-long, 3-inch diameter drain line; (7) a buried 300-foot-long, 48-volt transmission line connecting the turbine-generator unit to Zealand Falls Hut; and (8) appurtenant facilities. The project generates approximately 1,010 kilowatt-hours annually. The applicant proposes to continue operating the project in a run-of-river mode.

m. Due to the applicant's close coordination with federal and state agencies during preparation of the application, the inclusion of draft terms and conditions with the application, and the lack of any new construction in the applicant's proposal, we intend to waive scoping and expedite the licensing process. Based on a review of the application, resource agency consultation letters including the preliminary terms and conditions, and comments filed to date, Commission staff intends to prepare a single environmental assessment (EA). Commission staff determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period, and no new issues are likely to be identified through additional scoping. The EA will consider assessing the potential effects of project operation on geology and soils, aquatic, terrestrial, threatened and endangered species, recreation, and cultural and historic resources.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list

prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. *Procedural schedule:* The application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of the availability of the EA.	August 2015.

Dated: February 13, 2015.

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

*Deputy Secretary.*

[FR Doc. 2015-03647 Filed 2-23-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

#### Filings Instituting Proceedings

*Docket Numbers:* RP15-453-000.  
*Applicants:* Transwestern Pipeline Company, LLC.

*Description:* Compliance filing per 154.203: Penalty Refund Report.  
*Filed Date:* 2/12/15.

*Accession Number:* 20150212-5083.  
*Comments Due:* 5 p.m. ET 2/24/15.

*Docket Numbers:* RP15-454-000.  
*Applicants:* Northern Natural Gas Company.

*Description:* Northern Natural Gas submits report of the penalty and daily delivery variance charge (DDVC) revenues that have been credited to shippers.

*Filed Date:* 2/12/15.  
*Accession Number:* 20150212-5115.  
*Comments Due:* 5 p.m. ET 2/24/15.

*Docket Numbers:* RP15-455-000.  
*Applicants:* Sierrita Gas Pipeline LLC.

*Description:* § 4(d) rate filing per 154.204: Parking and Lending Service Filing to be effective 4/1/2015.

*Filed Date:* 2/12/15.  
*Accession Number:* 20150212-5118.  
*Comments Due:* 5 p.m. ET 2/24/15.

*Docket Numbers:* RP15-456-000.  
*Applicants:* Northern Natural Gas Company.

*Description:* § 4(d) rate filing per 154.204: 20150212 Negotiated Rate to be effective 2/13/2015.

*Filed Date:* 2/12/15.

*Accession Number:* 20150212–5169.

*Comments Due:* 5 p.m. ET 2/24/15.

*Docket Numbers:* RP15–457–000.

*Applicants:* Rockies Express Pipeline LLC.

*Description:* § 4(d) rate filing per 154.204: Neg Rate 2015–02–12 Concord to be effective 2/12/2015.

*Filed Date:* 2/12/15.

*Accession Number:* 20150212–5170.

*Comments Due:* 5 p.m. ET 2/24/15.

*Docket Numbers:* RP15–458–000.

*Applicants:* ANR Pipeline Company.

*Description:* § 4(d) rate filing per 154.601: Integrys Energy FTS–1 Agmts to be effective 2/13/2015.

*Filed Date:* 2/13/15.

*Accession Number:* 20150213–5046.

*Comments Due:* 5 p.m. ET 2/25/15.

*Docket Numbers:* RP15–459–000.

*Applicants:* National Fuel Gas Supply Corporation.

*Description:* § 4(d) rate filing per 154.403(d)(2): Fuel Tracker (04/01/15) to be effective 4/1/2015.

*Filed Date:* 2/13/15.

*Accession Number:* 20150213–5267.

*Comments Due:* 5 p.m. ET 2/25/15.

*Docket Numbers:* RP15–460–000.

*Applicants:* Texas Eastern Transmission, LP.

*Description:* § 4(d) rate filing per 154.204: TETLP Mainline-Lateral Fuel Option to be effective 5/1/2015.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218–5008.

*Comments Due:* 5 p.m. ET 3/2/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 18, 2015.

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

*Deputy Secretary.*

[FR Doc. 2015–03739 Filed 2–23–15; 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 corporate filings:

*Docket Numbers:* EC15–76–000.

*Applicants:* PowerMinn 9090, LLC, Fibrominn LLC, Benson Power, LLC, CPV Biomass Holdings, LLC.

*Description:* Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of PowerMinn 9090, LLC, et. al.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218–5260.

*Comments Due:* 5 p.m. ET 3/11/15.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG15–50–000.

*Applicants:* Prairie Breeze Wind Energy LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Prairie Breeze Wind Energy LLC.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218–5106.

*Comments Due:* 5 p.m. ET 3/11/15.

*Docket Numbers:* EG15–51–000.

*Applicants:* Prairie Breeze Wind Energy II LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Prairie Breeze Wind Energy II LLC.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218–5109.

*Comments Due:* 5 p.m. ET 3/11/15.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER13–99–004.

*Applicants:* Puget Sound Energy, Inc.  
*Description:* Compliance filing per 35: OATT Order No. 1000 Compliance Filing to be effective N/A.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218–5203.

*Comments Due:* 5 p.m. ET 3/11/15.

*Docket Numbers:* ER13–1447–002.

*Applicants:* Public Service Company of New Mexico.

*Description:* Compliance filing per 35: PNM's Order No. 1000 Interregional Compliance Filing of WestConnect Parties to be effective N/A.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218–5130.

*Comments Due:* 5 p.m. ET 3/11/15.

*Docket Numbers:* ER13–1450–002.

*Applicants:* Arizona Public Service Company.

*Description:* Compliance filing per 35: Western Interconnection—Order No. 1000 Interregional Compliance Filing to be effective N/A.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218–5125.

*Comments Due:* 5 p.m. ET 3/11/15.

*Docket Numbers:* ER13–1450–002.

*Applicants:* Arizona Public Service Company.

*Description:* Report Filing: Western Interconnection—Order No. 1000 Interregional Compliance Filing to be effective N/A.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218–5134.

*Comments Due:* 5 p.m. ET 3/11/15.

*Docket Numbers:* ER13–1461–002.

*Applicants:* Tucson Electric Power Company.

*Description:* Compliance filing per 35: Order No. 1000 Interregional Compliance Filing to be effective N/A.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218–5179.

*Comments Due:* 5 p.m. ET 3/11/15.

*Docket Numbers:* ER13–1462–002.

*Applicants:* UNS Electric, Inc.

*Description:* Compliance filing per 35: Order No. 1000 Interregional Compliance Filing to be effective N/A.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218–5180.

*Comments Due:* 5 p.m. ET 3/11/15.

*Docket Numbers:* ER13–1465–002.

*Applicants:* El Paso Electric Company.

*Description:* Compliance filing per 35: Compliance Filing with FERC December 18, 2014 Interregional Order to be effective N/A.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218–5142.

*Comments Due:* 5 p.m. ET 3/11/15.

*Docket Numbers:* ER13–1466–002.

*Applicants:* NV Energy, Inc.

*Description:* Compliance filing per 35: OATT Order 1000 Interregional Compliance December 18, 2014 Order to be effective N/A.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218–5201.

*Comments Due:* 5 p.m. ET 3/11/15.

*Docket Numbers:* ER13–1469–002.

*Applicants:* Public Service Company of Colorado.

*Description:* Compliance filing per 35: 2015–2–18\_PSCo\_InterRegional Comp Filing to be effective N/A.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218–5013.

*Comments Due:* 5 p.m. ET 3/11/15.

*Docket Numbers:* ER13–1470–002.

*Applicants:* California Independent System Operator Corporation.

*Description:* Compliance filing per 35: 2015–02–Interregional Second Compliance to be effective 10/1/2015.

*Filed Date:* 2/18/15.  
*Accession Number:* 20150218–5135.  
*Comments Due:* 5 p.m. ET 3/11/15.  
*Docket Numbers:* ER13–1473–002.  
*Applicants:* PacifiCorp.  
*Description:* Compliance filing per 35: OATT Order 1000 Second Interregional Compliance Filing to be effective 10/1/2013.

*Filed Date:* 2/18/15.  
*Accession Number:* 20150218–5182.  
*Comments Due:* 5 p.m. ET 3/11/15.  
*Docket Numbers:* ER13–1730–002.  
*Applicants:* Avista Corporation.  
*Description:* Compliance filing per 35: Avista Corp OATT Order 1000 Compliance Filing to be effective 1/1/2015.

*Filed Date:* 2/18/15.  
*Accession Number:* 20150218–5096.  
*Comments Due:* 5 p.m. ET 3/11/15.  
*Docket Numbers:* ER14–346–003.  
*Applicants:* MATL LLP.  
*Description:* Compliance filing per 35: Compliance with ER14–346 to be effective N/A.

*Filed Date:* 2/18/15.  
*Accession Number:* 20150218–5141.  
*Comments Due:* 5 p.m. ET 3/11/15.  
*Docket Numbers:* ER14–2707–003.  
*Applicants:* Mammoth Plains Wind Project, LLC.  
*Description:* Supplement to January 13, 2015 Notice of Non-Material Change in Status of Mammoth Plains Wind Project, LLC.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5160.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER14–2868–002.  
*Applicants:* Portland General Electric Company.

*Description:* Tariff Amendment per 35.17(b): 7th Amend Boardman Agreement Deficiency Response 2 to be effective 11/1/2014.

*Filed Date:* 2/18/15.  
*Accession Number:* 20150217–5081.  
*Comments Due:* 5 p.m. ET 3/10/15.  
*Docket Numbers:* ER15–191–001.  
*Applicants:* Duke Energy Progress, Inc.

*Description:* Compliance filing per 35: Compliance Filing ER15–191, ER15–74, ER13–1313, ER15–345 to be effective 1/1/2014.

*Filed Date:* 2/18/15.  
*Accession Number:* 20150218–5006.  
*Comments Due:* 5 p.m. ET 3/11/15.  
*Docket Numbers:* ER15–807–001.  
*Applicants:* PJM Interconnection, L.L.C., Duke Energy Ohio, Inc.

*Description:* Tariff Amendment per 35.17(b): Duke submits Amendment to Revised SA No. 3140 Filing to be effective 11/10/2014.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218–5054.  
*Comments Due:* 5 p.m. ET 3/11/15.  
*Docket Numbers:* ER15–916–000.  
*Applicants:* Sierra Solar Greenworks LLC.

*Description:* Request for Waiver of Commission Rules and Request for Waiver of Prior Notice for Certificate of Concurrence for Shared Facilities Agreement of Sierra Solar Greenworks LLC.

*Filed Date:* 2/18/15.  
*Accession Number:* 20150217–5195.  
*Comments Due:* 5 p.m. ET 3/5/15.  
*Docket Numbers:* ER15–1039–000.  
*Applicants:* Homer City Generation, L.P.

*Description:* Tariff Cancellation per 35.17(a): Withdrawal of Homer City Generation Filing in ER15–1039 to be effective N/A.

*Filed Date:* 2/18/15.  
*Accession Number:* 20150217–5077.  
*Comments Due:* 5 p.m. ET 3/10/15.  
*Docket Numbers:* ER15–1050–000.  
*Applicants:* ISO New England Inc.  
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Rev. to Address Treatment of ETU (Part 1 of 2) to be effective 2/16/2015.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5310.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER15–1051–000.  
*Applicants:* ISO New England Inc.  
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Rev. to Address the Treatment of ETU (Part 2 of 2) to be effective 2/16/2015.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5317.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER15–1052–000.  
*Applicants:* Transource Missouri, LLC.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): TMO Facilities Sharing Agreement Concurrence to be effective 4/15/2015.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5324.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER15–1053–000.  
*Applicants:* Wisconsin Power and Light Company.

*Description:* Compliance filing per 35: Amended Wisconsin Dells PSA to be effective 2/12/2015.

*Filed Date:* 2/18/15.  
*Accession Number:* 20150217–5073.  
*Comments Due:* 5 p.m. ET 3/10/15.  
*Docket Numbers:* ER15–1054–000.  
*Applicants:* Central Maine Power Company.

*Description:* Notice of Termination of Interconnection Agreement No. 108 of Central Maine Power Company.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5334.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER15–1055–000.  
*Applicants:* AEP Texas Central Company.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): TCC-Patriot Wind Farm IA Amendment to be effective 2/9/2015.

*Filed Date:* 2/18/15.  
*Accession Number:* 20150218–5017.  
*Comments Due:* 5 p.m. ET 3/11/15.  
*Docket Numbers:* ER15–1056–000.  
*Applicants:* Cassadaga Wind LLC.  
*Description:* Petition of Cassadaga Wind LLC for Limited Waiver.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5349.  
*Comments Due:* 5 p.m. ET 2/27/15.  
*Docket Numbers:* ER15–1057–000.  
*Applicants:* AEP Texas North Company.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): TNC-Buckthorn Westex Interconnection Agreement to be effective 1/26/2015.

*Filed Date:* 2/18/15.  
*Accession Number:* 20150218–5019.  
*Comments Due:* 5 p.m. ET 3/11/15.  
*Docket Numbers:* ER15–1058–000.  
*Applicants:* Southern California Edison Company.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Amended LGIA NextEra Desert Center Blythe, LLC to be effective 2/19/2015.

*Filed Date:* 2/18/15.  
*Accession Number:* 20150218–5040.  
*Comments Due:* 5 p.m. ET 3/11/15.  
*Docket Numbers:* ER15–1059–000.  
*Applicants:* Wisconsin Electric Power Company.

*Description:* Notice of Cancellation Service Agreement No. 58 of Wisconsin Electric Power Company.

*Filed Date:* 2/18/15.  
*Accession Number:* 20150218–5133.  
*Comments Due:* 5 p.m. ET 3/11/15.  
*Docket Numbers:* ER15–1060–000.  
*Applicants:* Arizona Public Service Company.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Rate Schedule Nos. 242 and 243 Certificate of Concurrence to be effective 11/1/2014.

*Filed Date:* 2/18/15.  
*Accession Number:* 20150218–5145.  
*Comments Due:* 5 p.m. ET 3/11/15.  
*Docket Numbers:* ER15–1061–000.  
*Applicants:* New York Independent System Operator, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 205—Ancillary Service Demand Curves; Transmission Shortage Cost to be effective 12/31/9998.

*Filed Date:* 2/18/15.  
*Accession Number:* 20150218–5152.

*Comments Due:* 5 p.m. ET 3/11/15.  
*Docket Numbers:* ER15-1062-000.  
*Applicants:* PacifiCorp.  
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): BPA AC Intertie Agreement 13th Revised to be effective 4/20/2015.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218-5184.

*Comments Due:* 5 p.m. ET 3/11/15.

*Docket Numbers:* ER15-1063-000.

*Applicants:* Northern States Power Company, a Minnesota corporation.  
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2015-2-18 GRE-Multi-Pty JPZ Agrmt 304-NSP-0.2.0 to be effective 9/1/2014.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218-5191.

*Comments Due:* 5 p.m. ET 3/11/15.

*Docket Numbers:* ER15-1064-000.

*Applicants:* California Clean Power Corp.

*Description:* Initial rate filing per 35.12 California Clean Power Corp. Initial Market-Based Rate Tariff to be effective 4/20/2015.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218-5214.

*Comments Due:* 5 p.m. ET 3/11/15.

*Docket Numbers:* ER15-1065-000.

*Applicants:* Balko Wind, LLC.

*Description:* Initial rate filing per 35.12 Balko Wind, LLC—MBR Tariff to be effective 2/18/2015.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218-5215.

*Comments Due:* 5 p.m. ET 3/11/15.

*Docket Numbers:* ER15-1066-000.

*Applicants:* Red Horse Wind 2, LLC.

*Description:* Initial rate filing per 35.12 Red Horse 2, LLC—MBR Tariff to be effective 2/18/2015.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218-5263.

*Comments Due:* 5 p.m. ET 3/11/15.

*Docket Numbers:* ER15-1067-000.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2015-02-18\_MMTG RTO Adder Filing to be effective 1/6/2015.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218-5273.

*Comments Due:* 5 p.m. ET 3/11/15.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF15-440-000.

*Applicants:* Grossmont Hospital Corporation.

*Description:* Form 556 of Grossmont Hospital Corporation.

*Filed Date:* 2/13/15.

*Accession Number:* 20150213-5351.

*Comments Due:* None Applicable.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

*Docket Numbers:* RR15-6-000.

*Applicants:* North American Electric Reliability Corporation.

*Description:* Request of North American Electric Reliability Corporation to Revise Certain "Metrics" Components for Its Annual Business Plan and Budget Filings and Its Annual Actual Cost-to-Budget True-up Filings.

*Filed Date:* 2/18/15.

*Accession Number:* 20150218-5205.

*Comments Due:* 5 p.m. ET 3/11/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: February 18, 2015.

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

*Deputy Secretary.*

[FR Doc. 2015-03743 Filed 2-23-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG15-48-000.

*Applicants:* Pilot Hill Wind, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Pilot Hill Wind, LLC.

*Filed Date:* 2/13/15.

*Accession Number:* 20150213-5230.

*Comments Due:* 5 p.m. ET 3/6/15.

*Docket Numbers:* EG15-49-000.

*Applicants:* Kingfisher Wind, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Kingfisher Wind, LLC.

*Filed Date:* 2/13/15.

*Accession Number:* 20150213-5280.

*Comments Due:* 5 p.m. ET 3/6/15.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10-2249-004.

*Applicants:* Portland General Electric Company.

*Description:* Notice of Non-Material Change in Status of Portland General Electric Company.

*Filed Date:* 2/13/15.

*Accession Number:* 20150213-5211.

*Comments Due:* 5 p.m. ET 3/6/15.

*Docket Numbers:* ER12-1279-001.

*Applicants:* BluCo Energy LLC.

*Description:* Notification of Non-Material Change in Status of BluCo Energy LLC.

*Filed Date:* 2/13/15.

*Accession Number:* 20150213-5213.

*Comments Due:* 5 p.m. ET 3/6/15.

*Docket Numbers:* ER13-2379-004.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* Compliance filing per 35:2015-02-13 Attachment O MISO TO Rate Protocol Compliance Filing to be effective 1/1/2014.

*Filed Date:* 2/13/15.

*Accession Number:* 20150213-5224.

*Comments Due:* 5 p.m. ET 3/6/15.

*Docket Numbers:* ER15-522-002.

*Applicants:* Arizona Public Service Company.

*Description:* Compliance filing per 35: Errata to MBR Tariff Filing Under ER15-522 to be effective 2/2/2015.

*Filed Date:* 2/13/15.

*Accession Number:* 20150213-5263.

*Comments Due:* 5 p.m. ET 3/6/15.

*Docket Numbers:* ER15-697-001.

*Applicants:* Tonopah Solar Energy, LLC.

*Description:* Second supplement to December 22, 2014 Tonopah Solar Energy, LLC tariff filing.

*Filed Date:* 2/13/15.

*Accession Number:* 20150213-5152.

*Comments Due:* 5 p.m. ET 3/6/15.

*Docket Numbers:* ER15-709-001.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Tariff Amendment per 35.17(b): 2015-02-13\_SA 2331 Termination MidAmerican-Cornbelt WDS to be effective 1/10/2015.

*Filed Date:* 2/13/15.

*Accession Number:* 20150213-5220.

*Comments Due:* 5 p.m. ET 3/6/15.

*Docket Numbers:* ER15-1040-000.

*Applicants:* NSTAR Electric Company.

*Description:* Initial rate filing per 35.12 LCC Services Agreement—Braintree to be effective 5/1/2015.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5169.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER15–1041–000.  
*Applicants:* Prairie Breeze Wind Energy II LLC.  
*Description:* Baseline eTariff Filing per 35.1: Application for Market-Based Rate Authorization to be effective 4/15/2015.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5180.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER15–1041–001.  
*Applicants:* Prairie Breeze Wind Energy II LLC.  
*Description:* Tariff Amendment per 35.17(b): Supplement to Market-Based Rate Application to be effective 4/15/2015.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5195.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER15–1042–000.  
*Applicants:* New York Independent System Operator, Inc.  
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): NYISO 205 filing VSS tariff revision to be effective 1/1/2016.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5188.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER15–1043–000.  
*Applicants:* Southwest Power Pool, Inc.  
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2198R17 Kansas Power Pool NITSA and Cancellation of 1997R2 City of Mulvane, KS to be effective 9/1/2014.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5190.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER15–1044–000.  
*Applicants:* Southwest Power Pool, Inc.  
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 607R24 Westar Energy, Inc. NITSA NOA to be effective 2/1/2015.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5196.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER15–1045–000.  
*Applicants:* Pilot Hill Wind, LLC.  
*Description:* Baseline eTariff Filing per 35.1: Pilot Hill Wind Initial Baseline MBR Application Filing to be effective 4/15/2015.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5198.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER15–1046–000.  
*Applicants:* Kansas City Power & Light Company.  
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): KCP&L Rate Schedule 140 Filing to be effective 4/15/2015.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5212.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER15–1047–000.  
*Applicants:* R.E. Ginna Nuclear Power Plant, LLC.  
*Description:* Initial rate filing per 35.12 Initial Rates Normal to be effective 4/1/2015.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5233.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER15–1047–000.  
*Applicants:* R.E. Ginna Nuclear Power Plant, LLC.  
*Description:* Initial rate filing per 35.12 Initial Rates Normal to be effective 4/1/2015.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5235.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER15–1048–000.  
*Applicants:* KCP&L Greater Missouri Operations Company.  
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): KCP&L–GMO Rate Schedule 136 Filing to be effective 4/15/2015.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5250.  
*Comments Due:* 5 p.m. ET 3/6/15.  
*Docket Numbers:* ER15–1049–000.  
*Applicants:* Southwest Power Pool, Inc.  
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Revisions in Addendum 1 of Attachment AF to be effective 4/15/2015.

*Filed Date:* 2/13/15.  
*Accession Number:* 20150213–5265.  
*Comments Due:* 5 p.m. ET 3/6/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 13, 2015.  
**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*  
 [FR Doc. 2015–03644 Filed 2–23–15; 8:45 am]  
**BILLING CODE 6717–01–P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. EL15–45–000]

**Notice of Complaint**

Arkansas Electric Cooperative Corporation  
 Mississippi Delta Energy Agency  
 Clarksdale Public Utilities Commission  
 Public Service Commission of Yazoo City  
 Hoosier Energy Rural Electric Cooperative, Inc.

v.

ALLETE, Inc.  
 Ameren Illinois Company  
 Ameren Missouri  
 Ameren Transmission Company of Illinois  
 American Transmission Company LLC  
 Cleco Power LLC  
 Duke Energy Business Services, LLC  
 Entergy Arkansas, Inc.  
 Entergy Gulf States Louisiana, LLC  
 Entergy Louisiana, LLC  
 Entergy Mississippi, Inc.  
 Entergy New Orleans, Inc.  
 Entergy Texas, Inc.  
 Indianapolis Power & Light Company  
 International Transmission Company  
 ITC Midwest LLC  
 Michigan Electric Transmission Company, LLC  
 MidAmerican Energy Company  
 Montana-Dakota Utilities Co.  
 Northern Indiana Public Service Company  
 Northern States Power Company-Minnesota  
 Northern States Power Company-Wisconsin  
 Otter Tail Power Company  
 Southern Indiana Gas & Electric Company

Take notice that on February 12, 2015, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e) and Rules 206 and 212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and 385.212, Arkansas Electric Cooperative Corporation (AECC), Mississippi Delta Energy Agency (MDEA), Clarksdale Public Utilities Commission (Clarksdale), Public Service Commission of Yazoo City, (Yazoo City), and Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier) (collectively, Complainants or Joint Customer Complainants) filed a formal complaint against ALLETE, Inc. (for its operating division Minnesota Power, Inc. and its wholly-owned subsidiary Superior Water Light, and Power Company), Ameren Illinois Company, Ameren Missouri, Ameren Transmission Company of Illinois, American Transmission Company LLC (ATC), Cleco Power LLC, Duke Energy Business Services, LLC, Entergy Arkansas, Inc., Entergy Gulf States Louisiana, LLC, Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc., Indianapolis

Power & Light Company, International Transmission Company, ITC Midwest LLC, Michigan Electric Transmission Company, LLC, MidAmerican Energy Company, Montana-Dakota Utilities Co., Northern Indiana Public Service Company, Northern States Power Company-Minnesota, Northern States Power Company Wisconsin, Otter Tail Power Company, and Southern Indiana Gas & Electric Company (collectively, Respondents), alleging that the current 12.38% return on equity applicable to transmission-owning members of the Midcontinent Independent System Operator, Inc., and the 12.2% ROE applicable to ATC are excessive and should be reduced as of the date of the Complaint.

The Joint Customer Complainants certify that copies of the complaint were served on the contacts for the Respondents as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondents' answer and all interventions, or protests must be filed on or before the comment date. The Respondents' answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5:00 p.m. Eastern Time on March 4, 2015.

Dated: February 13, 2015.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2015-03645 Filed 2-23-15; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. PF14-10-000]

**Transcontinental Gas Pipe Line Company, LLC; Supplemental Notice of Intent to Prepare an Environmental Assessment for the Planned Dalton Expansion Project, Request for Comments on Environmental Issues Related to a New Route Variation Under Consideration, and Notice of Public Scoping Meeting**

In response to concerns raised about the Dalton Expansion Project planned by the Transcontinental Gas Pipe Line Company, LLC, (Transco), a new route variation is being considered. The Georgia Department of Natural Resources—Wildlife Resources Division, the U.S. Fish and Wildlife Service, and the Nature Conservancy requested a route variation in northern

Paulding County, Georgia. Transco reviewed the requested variation and incorporated some changes for engineering and other considerations. The variation, referred to herein as the Raccoon Creek Watershed Variation (Transco Major Route Alternative H), is being considered to avoid and minimize potential environmental impacts on the biologically sensitive Raccoon Creek Watershed.

This variation, which is described in further detail below, would affect new landowners; therefore, the Federal Energy Regulatory Commission (FERC or Commission) is issuing this supplemental notice (Notice) to provide these new landowners and other interested parties an opportunity to comment on the merits of the route variation.

The FERC is the lead federal agency responsible for conducting the environmental review of the Dalton Expansion Project (Project). The Commission's staff will prepare an environmental assessment (EA) that discusses the environmental impacts of the Project. This EA will be used to inform the Commission as it determines whether the Project is in the public convenience and necessity.

This Notice announces the opening of an additional scoping period the Commission will use to gather input from the public and interested agencies. Specifically, we are requesting comments on the Raccoon Creek Watershed Variation. Please note that comments on this Notice should be filed with the Commission by March 16, 2015.

Comments on the route variation may be submitted in writing as described in the public participation section of this notice. In lieu of, or in addition to, submitting written comments, you are invited to attend a public scoping meeting on March 4, 2015 at the Dallas Civic Center in Dallas, Georgia.

Date and time	Location
March 4, 2015, 7:00 p.m. EST .....	Dallas Civic Center, 121 E Griffin Street, Dallas, GA 30132, (770) 445-5180.

You have been identified as a landowner or an interested party that may be affected by the Raccoon Creek Watershed Variation or by the corresponding segment of the currently planned route. Information in this notice was prepared to familiarize you with this new route variation, the Project as a whole, the Commission's environmental review process, and

instruct you on how to submit comments about the route variation under consideration. This notice is also being sent to federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives should

notify their constituents of this proposed route variation and encourage them to comment on their areas of concern.

If you are a landowner receiving this Notice, a pipeline company representative may have already contacted you or may contact you soon about surveys associated with the Raccoon Creek Watershed Variation. If the company ultimately decides to



incorporate this route variation it would contact you again to acquire an easement to construct, operate, and maintain the pipeline. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project and the route variation, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

To help potentially affected landowners and other interested parties better understand the Commission and its environmental review process, the "For Citizens" section of the FERC Web site ([www.ferc.gov](http://www.ferc.gov)) provides information about getting involved in FERC jurisdictional projects. A citizens' guide entitled "An Interstate Natural Gas Facility On My Land? What Do I Need to Know?" is also available in this section of the Commission's Web site. This guide addresses a number of frequently asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

#### Dalton Expansion Project

Transco plans to construct and operate about 111 miles of new natural gas pipeline and associated facilities in Coweta, Carroll, Douglas, Paulding, Bartow, Gordon, and Murray Counties, Georgia and a new compressor station in Carroll County, Georgia. Additionally, Transco plans to modify existing facilities along its mainline transmission system in Maryland, Virginia, and North Carolina to accommodate bidirectional flow. Transco has indicated that the Project would provide 448,000 dekatherms per day of incremental firm transportation service to markets in northwest Georgia.

#### Summary of the Raccoon Creek Watershed Variation

As stated previously, the Raccoon Creek Watershed Variation was created to avoid and minimize potential environmental impacts on the biologically sensitive Raccoon Creek Watershed. The Raccoon Creek Watershed covers about 35,000 acres, includes several high priority streams, significant wetlands, and provides habitat for numerous federally-listed threatened and endangered species. The route variation would originate at approximately milepost (MP) 44 of the planned route in northern Paulding County. The variation would extend in

a northeasterly direction for approximately 9.0 miles before joining an existing utility easement and then extending northwest for another 1.5 miles, rejoining the planned route at approximately MP 53 near the Paulding and Bartow County line.

The general location of the Project facilities and the Raccoon Creek Watershed Variation are shown in appendix 1.<sup>1</sup>

#### The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us<sup>2</sup> to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the Project under these general headings:

- Geology and soils;
- water resources, fisheries, and wetlands;
- vegetation and wildlife;
- endangered and threatened species;
- land use;
- socioeconomics;
- cultural resources;
- air quality and noise; and
- public safety.

We will also evaluate possible alternatives to the Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we began our NEPA review under the Commission's pre-filing process on April 25, 2014. The purpose of the pre-filing process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an

application. As part of our pre-filing review, we contacted federal and state agencies to discuss preparation of the EA. During the process, the Raccoon Creek Watershed Variation was proposed. Transco will provide additional environmental data to present the potential impacts of the variation at a later date.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. We will also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section of this notice.

#### Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.<sup>3</sup> We will define the Project-specific Area of Potential Effects (APE) in consultation with the SHPO as the Project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this Project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

#### Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly

<sup>1</sup> The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at [www.ferc.gov](http://www.ferc.gov) using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

<sup>2</sup> "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

<sup>3</sup> The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

recorded, please send your comments so that the Commission receives them in Washington, DC on or before March 16, 2015.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number (PF14–10–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or [efiling@ferc.gov](mailto:efiling@ferc.gov).

(1) You can file your comments electronically using the *eComment* feature located on the Commission's Web site ([www.ferc.gov](http://www.ferc.gov)) under the link to *Documents and Filings*. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature located on the Commission's Web site ([www.ferc.gov](http://www.ferc.gov)) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on “*eRegister*.” You must select the type of filing you are making. If you are filing a comment on a particular project, please select “Comment on a Filing”; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

#### Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned Project.

Copies of the EA will be sent to the environmental mailing list for public

review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

#### Becoming an Intervenor

Once Transco files its application with the Commission, you may want to become an “intervenor” which is an official party to the Commission's proceeding. Intervenor play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the “e-filing” link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the Project.

#### Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site ([www.ferc.gov](http://www.ferc.gov)) using the eLibrary link. Click on the eLibrary link, click on “General Search” and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.*, PF14–10). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp).

Finally, public meetings or site visits will be posted on the Commission's calendar located at [www.ferc.gov/EventCalendar/EventsList.aspx](http://www.ferc.gov/EventCalendar/EventsList.aspx) along with other related information.

Dated: February 13, 2015.

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

*Deputy Secretary.*

[FR Doc. 2015–03648 Filed 2–23–15; 8:45 am]

BILLING CODE 6717–01–P

#### DEPARTMENT OF ENERGY

##### Federal Energy Regulatory Commission

[Apple, Inc.; Project No. 14430–004]

#### Notice of Transfer of Exemption

1. By letter filed January 9, 2014, Apple, Inc. informed the Commission that the exemption from licensing for the Monroe Drop Hydroelectric Project, FERC No. 14430, originally issued August 1, 2014,<sup>1</sup> has been transferred from Monroe Hydro, LLC to Apple, Inc. The proposed project would be located on North Unit Irrigations District's main irrigation canal near the town of Culver in Jefferson County, Oregon. The transfer of an exemption does not require Commission approval.

2. Apple, Inc. is now the exemptee for the Monroe Drop Hydroelectric Project, FERC No. 14430. All correspondence should be forwarded to: Apple, Inc., Attn: Mr. Nathan Fleisher, 1 Infinite Loop, MS: 119–REF, Cupertino, CA 95014.

Dated: February 18, 2015.

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

*Deputy Secretary.*

[FR Doc. 2015–03745 Filed 2–23–15; 8:45 am]

BILLING CODE 6717–01–P

#### DEPARTMENT OF ENERGY

##### Federal Energy Regulatory Commission

[Docket No. ER15–1045–000]

#### Pilot Hill Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Pilot Hill Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426,

<sup>1</sup> 148 FERC ¶ 62,098, Order Granting Exemption from Licensing (Conduit).

in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 10, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: February 18, 2015.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2015-03744 Filed 2-23-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER15-1041-000]

#### **Prairie Breeze Wind Energy II LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding of Prairie Breeze Wind Energy II LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 10, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's

Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: February 18, 2015.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2015-03748 Filed 2-23-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### **Notice of Application For Transfer of Licenses and Soliciting Comments, Motions To Intervene, and Protests**

Ada County, Idaho  
Aquenergy Systems, Inc.  
Barnet Hydro Company  
Big Wood Canal Company  
BP Hydro Associates  
Cherokee Falls Hydroelectric Project, LLC  
Consolidated Hydro New York, Inc.  
Consolidated Hydro New Hampshire, Inc.  
Consolidated Hydro Southeast, Inc.  
Dietrich Drop Hydro, LLC  
Essex Company  
Fowler Hydro, LLC  
Fulcrum, Inc.  
Goodyear Lake Hydro, LLC  
Hydro Development Group Inc.  
Hydro Development Group Acquisition, LLC  
Kelley's Falls, LLC  
Lawrence Hydroelectric Associates  
Lower Saranac Corporation  
Lower Saranac Hydro, LLC  
Lower Saranac Hydro Partners, L.P.  
Missisquoi Associates  
Newbury Hydro Company  
Pelzer Hydro Company, Inc.  
Pyrites Associates  
Pyrites Hydro, LLC  
Rock Creek L.P.  
Salmon Falls Hydro, LLC  
Sweetwater Hydroelectric, Inc.  
Walden Hydro, LLC

*Project Nos.* 2416-027, 2428-006, 2788-016, 2800-044, 2880-012, 2883-006, 3025-025, 3189-047, 3511-021, 4114-056, 4428-007, 4881-025, 5261-020, 5702-016, 6058-020, 6059-019, 6115-014, 7153-016, 7186-048, 8909-025, 10253-029, 10254-024, 10898-014, and 11163-046

On January 26, 2015, a joint application for transfer of licenses was filed to include the following projects:

CONVERSIONS OF LICENSEE TO A LIMITED LIABILITY COMPANY

Project(s)	Transferor (existing licensee or co-licensee)	Transferee (new licensee or co-licensee)	Action
Cherokee Falls P-2880; Fries P-2883; Piedmont P-2428; Ware Shoals P-2416.	Aquenergy Systems, Inc .....	Aquenergy Systems, LLC .....	Conversion to limited liability company.
Barnet P-5702 .....	Barnet Hydro Company .....	Barnet Hydro Company, LLC .....	Conversion to limited liability company.
Kelley's Falls P-3025; South Berwick (Salmon Falls) P-11163.	Consolidated Hydro New Hampshire, Inc.	Consolidated Hydro New Hampshire, LLC.	Conversion to limited liability company.
Walden P-4428; Victory Mills P-7153.	Consolidated Hydro New York, Inc.	Consolidated Hydro New York, LLC.	Conversion to limited liability company.
Lower Pelzer P-10253; Upper Pelzer P-10254.	Consolidated Hydro Southeast, Inc.	Consolidated Hydro Southeast, LLC.	Conversion to limited liability company.
Lawrence P-2800 .....	Essex Company .....	Essex Company, LLC .....	Conversion to limited liability company.
Barber Dam P-4881 .....	Fulcrum, Inc .....	Fulcrum, LLC .....	Conversion to limited liability company.
Lower Saranac P-4114 .....	Lower Saranac Hydro Partners, L.P.	Lower Saranac Hydro Partners, LLC.	Conversion to limited liability company.
Sheldon Springs P-7186 .....	Missisquoi Associates .....	Missisquoi, LLC .....	Conversion to limited liability company.
Newbury P-5261 .....	Newbury Hydro Company .....	Newbury Hydro Company, LLC ...	Conversion to limited liability company.
Lower Pelzer P-10253; Upper Pelzer P-10254.	Pelzer Hydro Company, Inc .....	Pelzer Hydro Company, LLC .....	Conversion to limited liability company.
Rock Creek P-3189 .....	Rock Creek L.P .....	Rock Creek Hydro, LLC .....	Conversion to limited liability company.
Sweetwater P-10898 .....	Sweetwater Hydroelectric, Inc .....	Sweetwater Hydroelectric, LLC ....	Conversion to limited liability company.

MERGER OF TRANSFEROR INTO TRANSFEREE WITH TRANSFEREE SURVIVING

Project(s)	Transferor (existing licensee or co-licensee)	Transferee (new licensee or co-licensee)	Action
Fowler #7 P-6059; Colliersville P-2788; Hailesboro #4; P-6058.	Hydro Development Group Inc ....	Hydro Development Group Acquisition, LLC.	Merger of Transferor into Transferee with Transferee surviving.
Lawrence P-2800 .....	Lawrence Hydroelectric Associates.	Essex Company, LLC .....	Merger of Transferor into Transferee with Transferee surviving.
Groveville P-3511 .....	Lower Saranac Corporation .....	Lower Saranac Hydro, LLC .....	Merger of Transferor into Transferee with Transferee surviving.

TRANSFER OF PROJECT ASSETS TO A NEWLY FORMED LIMITED LIABILITY COMPANY

Project(s)	Transferor (existing licensee or co-licensee)	Transferee (new licensee or co-licensee)	Action
Cherokee Falls P-2880 .....	Aquenergy Systems, LLC .....	Cherokee Falls Hydroelectric Project, LLC.	Transfer of Project assets to Transferee.
Dietrich Drop P-8909 .....	BP Hydro Associates .....	Dietrich Drop Hydro, LLC .....	Transfer of Project assets to Transferee.
Kelley's Falls P-3025 .....	Consolidated Hydro New Hampshire, LLC.	Kelley's Falls, LLC .....	Transfer of Project assets to Transferee.
South Berwick (Salmon Falls) P-11163.	Consolidated Hydro New Hampshire, LLC.	Salmon Falls Hydro, LLC .....	Transfer of Project assets to Transferee.
Walden P-4428 .....	Consolidated Hydro New York, LLC.	Walden Hydro, LLC .....	Transfer of Project assets to Transferee.
Fowler #7 P-6059 .....	Hydro Development Group Acquisition, LLC.	Fowler Hydro, LLC .....	Transfer of Project assets to Transferee.
Pyrites P-6115 .....	Pyrites Associates .....	Pyrites Hydro, LLC .....	Transfer of Project assets to Transferee.
Colliersville P-2788 .....	Hydro Development Group Acquisition, LLC.	Goodyear Lake Hydro, LLC .....	Transfer of Project assets to Transferee.

Applicants seek Commission approval to transfer the licenses for the above projects by conversion of licensee to a limited liability company, merger of

transferor into transferee with transferee surviving, or transfer of project assets to a newly formed limited liability company.

*Applicants' Contact:* For Applicants other than Ada County, ID and Big Wood Canal Company: Mr. Stephen Champagne, Executive Vice President

and General Counsel, Enel Green Power North America, Inc., One Tech Drive, Suite 220, Andover, MA 01810, Phone: 978-296-6812, Email:

[steve.champagne@enel.com](mailto:steve.champagne@enel.com). Mr. William Conway, Jr., Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue NW., Washington, DC 20005, Phone 202-371-7135, Email: [William.conway@skadden.com](mailto:William.conway@skadden.com). For Ada County, ID: Board of Ada County Commissioners, c/o Lorna K. Jorgensen, Deputy Processing Attorney, Ada County Prosecuting Attorney's Office, Third Floor, Ada County Courthouse, 200 W. Front Street, Boise, ID 83702, Phone: 208-287-7722, Email: [ljorgensen@adaweb.net](mailto:ljorgensen@adaweb.net). For Big Wood Canal Company: Lynn Harmon, Big Wood Canal Company, 409 N Apple, Shoshone, ID 83352, Email: [lynnharmon@cableone.net](mailto:lynnharmon@cableone.net).

FERC Contact: Patricia W. Gillis (202) 502-8735, [patricia.gillis@ferc.gov](mailto:patricia.gillis@ferc.gov).

**Deadline for filing comments and motions to intervene:** 30 days from the issuance date of this notice by the Commission. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number(s) (P-2416-027, 2428-006, 2788-016, 2800-044, 2880-012, 2883-006, 3025-025, 3189-047, 3511-021, 4114-056, 4428-007, 4881-025, 5261-020, 5702-016, 6058-020, 6059-019, 6115-014, 7153-016, 7186-048, 8909-025, 10253-029, 10254-024, 10898-014, and 11163-046) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Dated: February 13, 2015.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2015-03646 Filed 2-23-15; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. AD15-4-000]

#### Technical Conference on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conferences issued on December 9, 2014<sup>1</sup> and the Supplemental Notice of Technical Conferences issued on January 6, 2015,<sup>2</sup> the Federal Energy Regulatory Commission (Commission) staff will hold an Eastern region<sup>3</sup> technical conference to discuss implications of compliance approaches to the Clean Power Plan proposed rule, issued by the Environmental Protection Agency (EPA) on June 2, 2014.<sup>4</sup> The technical conference will focus on issues related to electric reliability, wholesale electric markets and operations, and energy infrastructure in the Eastern region. The Commission will hold the Eastern region technical conference on March 11, 2015, from approximately 9:30 a.m. to 5:00 p.m. at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC. This conference is free of charge and open to the public. Commission members may participate in the conference. The agenda for the Eastern region technical conference is attached to this Supplemental Notice of Technical Conference.

Those interested in speaking at the technical conference should notify the

<sup>1</sup> Technical Conference on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure, Docket No. AD15-4-000, (Dec. 9, 2014) (Notice of Technical Conferences), available at <http://www.ferc.gov/CalendarFiles/20141209165657-AD15-4-000TC.pdf>.

<sup>2</sup> Technical Conference on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure, Docket No. AD15-4-000, (Jan. 6, 2015) (Supplemental Notice of Technical Conferences), available at <http://www.ferc.gov/CalendarFiles/20150106170115-AD15-4-000TC1.pdf>.

<sup>3</sup> For purposes of this conference, the Eastern region includes the following Commission-approved Order No. 1000 planning regions: ISO New England Inc. (ISO-NE), PJM Interconnection, LLC (PJM), New York Independent System Operator (NYISO), Southeastern Regional Transmission Planning (SERTP), South Carolina Regional Transmission Planning (SCRTP), and Florida Reliability Coordinating Council (FRCC). This region also includes the Northern Maine Independent System Administrator (NMISA).

<sup>4</sup> Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 FR 34,830 (2014) (Proposed Rule), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-06-18/pdf/2014-13725.pdf>.

Commission by February 18, 2015, by completing the online form at the following Web page: <https://www.ferc.gov/whats-new/registration/03-11-15-speaker-form.asp>. At this Web page, please provide an abstract (700 character limit) of the issue(s) you propose to address. Due to time constraints, we expect to not be able to accommodate all those interested in speaking. Selected speakers will be notified as soon as possible.

If you have not already done so, those who plan to attend the technical conference are strongly encouraged to complete the registration form located at: <https://www.ferc.gov/whats-new/registration/03-11-15-eastern-form.asp>. Those interested in attending the Eastern region conference are encouraged to register by close of business March 2, 2015.

The Commission will post information on the technical conference on the Calendar of Events on the Commission's Web site, <http://www.ferc.gov>, prior to the conference. The Eastern region technical conference will also be transcribed. Transcripts of the technical conference will be available for a fee from Ace-Federal Reporters, Inc. ((202) 347-3700 or (800) 336-6646). There will also be a free webcast of the conference. The Webcast will allow persons to watch the Eastern region technical conference, but not participate. Anyone with Internet access who desires to watch the Eastern region conference can do so by navigating to the Calendar of Events on the Commission's Web site, <http://www.ferc.gov>, and locating the Eastern region technical conference in the Calendar. The Eastern region technical conference will contain a link to its webcast.<sup>5</sup>

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free (866) 208-3372 (voice) or (202) 502-8659 (TTY), or send a FAX to (202) 208-2106 with the required accommodations.

For more information about the technical conferences, please contact:

#### Logistical Information

Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8368, [sarah.mckinley@ferc.gov](mailto:sarah.mckinley@ferc.gov).

<sup>5</sup> The Webcast will continue to be available on the Calendar of Events on the Commission's Web site, <http://www.ferc.gov>, for three months after the conference.

*Legal Information*

Alan Rukin, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8502, [alan.rukin@ferc.gov](mailto:alan.rukin@ferc.gov).

*Technical Information*

Matthew Jentgen, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8725, [matthew.jentgen@ferc.gov](mailto:matthew.jentgen@ferc.gov).

*Technical Information*

Michael Gildea, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8420, [michael.gildea@ferc.gov](mailto:michael.gildea@ferc.gov).

Dated: February 13, 2015.

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

*Deputy Secretary.*

[FR Doc. 2015-03643 Filed 2-23-15; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. AD15-4-000]

**Technical Conference on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure; Supplemental Notice of Technical Conferences**

As announced in the Notice of Technical Conferences issued on December 9, 2014<sup>1</sup> and the Supplemental Notice of Technical Conferences issued on January 6, 2015,<sup>2</sup> the Federal Energy Regulatory Commission (Commission) staff will hold a Western Region<sup>3</sup> technical conference to discuss implications of compliance approaches to the Clean Power Plan proposed rule, issued by the Environmental Protection Agency (EPA) on June 2, 2014.<sup>4</sup> The technical

<sup>1</sup> Technical Conference on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure, Docket No. AD15-4-000, (Dec. 9, 2014) (Notice of Technical Conferences), available at <http://www.ferc.gov/CalendarFiles/20141209165657-AD15-4-000TC.pdf>.

<sup>2</sup> Technical Conference on Environmental Regulations and Electric Reliability, Wholesale Electricity Markets, and Energy Infrastructure, Docket No. AD15-4-000, (Jan. 6, 2015) (Supplemental Notice of Technical Conferences), available at <http://www.ferc.gov/CalendarFiles/20150106170115-AD15-4-000TC1.pdf>.

<sup>3</sup> For purposes of this conference, the Western Region includes all the areas in the Western Interconnection, including the California Independent System Operator (CAISO).

<sup>4</sup> Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 FR 34,830 (2014) (Proposed

conference will focus on issues related to electric reliability, wholesale electric markets and operations, and energy infrastructure in the Western region. The Commission will hold the Western Region technical conference on February 25, 2015, from approximately 8:45 a.m. to 4:45 p.m. at the Renaissance Denver Hotel, 3801 Quebec Street, Denver, CO 80207 (Phone: (303) 399-7500). This conference is free of charge and open to the public. Commission members may participate in the conference. The agenda and list of speakers for the Western Region technical conference is attached to this Supplemental Notice of Technical Conferences.

If you have not already done so, those who plan to attend the technical conference are strongly encouraged to complete the registration form located at: <https://www.ferc.gov/whats-new/registration/02-25-15-form.asp>. Those interested in attending the Western region conference are encouraged to register by close of business February 16, 2015.

The Commission will post information on the technical conference on the Calendar of Events on the Commission's Web site, <http://www.ferc.gov>, prior to the conference. The Western Region technical conference will also be transcribed. Transcripts of the technical conference will be available for a fee from Ace-Federal Reporters, Inc. ((202) 347-3700 or 1 (800) 336-6646). There will also be a free audiocast of the conference. The audiocast will allow persons to listen to the Western region technical conference, but not participate. Anyone with Internet access who desires to listen to the Western region conference can do so by navigating to [www.ferc.gov](http://www.ferc.gov)'s Calendar of Events and locating the Western region technical conference in the Calendar. The Western region technical conference will contain a link to its audiocast.<sup>5</sup>

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free 1 (866) 208-3372 (voice) or (202) 502-8659 (TTY), or send a FAX to (202) 208-2106 with the required accommodations.

For more information about the technical conferences, please contact:

Rule), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-06-18/pdf/2014-13725.pdf>.

<sup>5</sup> The audiocast will continue to be available on the Calendar of Events on the Commission's Web site [www.ferc.gov](http://www.ferc.gov) for three months after the conference.

*Logistical Information*

Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8368, [sarah.mckinley@ferc.gov](mailto:sarah.mckinley@ferc.gov).

*Legal Information*

Alan Rukin, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8502, [alan.rukin@ferc.gov](mailto:alan.rukin@ferc.gov).

*Technical Information*

Matthew Jentgen, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8725, [matthew.jentgen@ferc.gov](mailto:matthew.jentgen@ferc.gov).

*Technical Information*

Michael Gildea, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8420, [michael.gildea@ferc.gov](mailto:michael.gildea@ferc.gov).

Dated: February 13, 2015.

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

*Deputy Secretary.*

[FR Doc. 2015-03642 Filed 2-23-15; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RM98-1-000]

**Records Governing Off-the-Record Communications; Public Notice**

February 18, 2015.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to

respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable

proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in

ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866)208-3676, or for TTY, contact (202)502-8659.

Exempt: Docket No.	File date	Presenter or requester
1. CP09-6-001 .....	1-29 to 2-11-15 .....	FERC Staff. <sup>1</sup>
2. CP13-483-000 .....	2-3-15 .....	Hon. Jeffrey A. Merkley.
3. CP13-483-000 .....	2-3-15 .....	Hon. Ron Wyden.
4. CP14-96-000 .....	2-9-15 .....	United States Senate. <sup>2</sup>
5. CP14-504-000 .....	2-9-15 .....	FERC Staff. <sup>3</sup>
6. CP13-193-000 .....	2-11-15 .....	FERC Staff. <sup>4</sup>
7. CP14-497-000 .....	2-12-15 .....	Janet I. Trumbull, Town Clerk, Town of Minden, NY.

<sup>1</sup> Meeting records for meeting that took place on 1/29/15, 2/3/15, 2/5/15, and 2/11/15.

<sup>2</sup> Letter signed by Hons. Charles E. Schumer and Kirsten Gillibrand.

<sup>3</sup> Phone record.

<sup>4</sup> Email record.

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

*Deputy Secretary.*

[FR Doc. 2015-03747 Filed 2-23-15; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Project No. 14628-000]

**Minneapolis Leased Housing Associates IV, Limited Partnership A-Mill Artists Loft Hydroelectric Project; Notice of Proposed Restricted Service List for a Programmatic Agreement For Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places**

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure<sup>1</sup> provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or

issue in the proceeding for which the list is established.

The Commission staff is consulting with the Minnesota State Historic Preservation Office (Minnesota SHPO) and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended*, (16 U.S.C. 470f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places that could be affected by issuance of an original license for the A-Mill Artists Loft Hydroelectric Project No. 14628.

The programmatic agreement, when executed by the Commission and the Minnesota SHPO, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below. The executed Programmatic Agreement would be incorporated into any Order issuing a license.

Minneapolis Leased Housing Associates IV, Limited Partnership, as applicant for the A-Mill Artists Loft Hydroelectric Project, has expressed an interest in this proceeding and is invited to participate in consultations to develop the Programmatic Agreement. For purposes of commenting on the programmatic agreement, we propose to restrict the service list for Project No. 14628 as follows:

John Eddins or Representative, Advisory Council on Historic Preservation, 401 F Street NW., Suite 308, Washington, DC 20001-2637.

Sarah J. Beimers or Representative, Manager of Government Programs & Compliance, State Historic Preservation Office, Minnesota Historical Society, 345 Kellogg Blvd. W., St. Paul MN 55102.

Owen Metz or Representative, Minneapolis Leased Housing Associates IV, Limited Partnership, 2905 Northwest Blvd., Suite 150, Plymouth, MN 55441.

Melissa Jenny or Representative, U.S. Army Corps of Engineers, Regulatory Project Manager, 180 5th St. East, Ste. 700, St. Paul, MN 55101-1678.

Susan Overson or Representative, Mississippi National River and Recreation Area, National Park Service, 111 East Kellogg Blvd., Suite 105, St. Paul, MN 55101.

Laura Salveson or Representative, Director, Mill City Museum, 704

<sup>1</sup> 18 CFR 385.2010.

South Second Street, Minneapolis, MN 55401.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including Traditional Cultural Properties. If historic properties are to be identified within the motion, please use a separate page, and label it NON-PUBLIC Information.

The Commission strongly encourages electronic filing. Please file motions using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-14628-000.

If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions within the 15-day period.

Dated: February 18, 2015.

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

*Deputy Secretary.*

[FR Doc. 2015-03746 Filed 2-23-15; 8:45 am]

**BILLING CODE 6717-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-15-000-5154; FRL-9923-52-OAR]

### Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2013

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

**ACTION:** Notice of document availability and request for comments.

**SUMMARY:** The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2013 is available for public review.

**DATES:** To ensure your comments are considered for the final version of the document, please submit your comments by March 26, 2015.

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

- **Mail:** Leif Hockstad, Climate Change Division, Office of Atmospheric Programs (MC-6207S), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

- **Email:** [hockstad.leif@epa.gov](mailto:hockstad.leif@epa.gov).

- **Fax:** (202) 566-2203.

The draft report can be obtained by visiting the U.S. EPA's Climate Change Site.

**FOR FURTHER INFORMATION CONTACT:** Mr. Leif Hockstad, Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Programs, Climate Change Division; telephone number: (202) 343-9432; email address: [hockstad.leif@epa.gov](mailto:hockstad.leif@epa.gov).

#### SUPPLEMENTARY INFORMATION:

The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2013 is being made available for a thirty day public review and comment period. Annual U.S. emissions for the period of time from 1990 through 2013 are summarized and presented by source category and sector. The inventory contains estimates of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), sulfur hexafluoride (SF<sub>6</sub>), and nitrogen trifluoride (NF<sub>3</sub>) emissions. The inventory also includes estimates of carbon fluxes in U.S. agricultural and forest lands. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC), and reported in a format consistent with the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines. The Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2013 is the latest in a series of annual U.S. submissions to the Secretariat of the UNFCCC. EPA requests recommendations for improving the overall quality of the inventory report to be finalized in April 2015, as well as subsequent inventory reports.

As in previous years and as encouraged by stakeholders in public comments received on the inventory, this inventory report incorporates data reported to the EPA's Greenhouse Gas Reporting Program (GHGRP). For certain sectors, the inventory uses values calculated by aggregating GHGRP data that are confidential business information (CBI). Once aggregated, these values no longer disclose facility-

level data. In order to determine that an aggregation protects underlying CBI, the EPA uses criteria established through a recent **Federal Register** notice (79 FR 32948, June 9, 2014) and posted on the GHGRP Web site, <http://www.epa.gov/ghgreporting/>. The EPA intends to continue to use GHGRP data, including aggregated CBI values, to develop the annual inventory. Some aggregations are calculated from data reported by many separate companies that the aggregations far exceed the criteria established by the EPA. For aggregations that do not far exceed the aggregation criteria, the EPA plans to notify facilities prior to publishing the aggregated data as noted in the FR notice.

Dated: February 17, 2015.

**Sarah Dunham,**

*Director, Office of Atmospheric Programs.*

[FR Doc. 2015-03729 Filed 2-23-15; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation has been Appointed Either Receiver, Liquidator, or Manager

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Update Listing of Financial Institutions in Liquidation.

**SUMMARY:** Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at [www.fdic.gov/bank/individual/failed/banklist.html](http://www.fdic.gov/bank/individual/failed/banklist.html) or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: February 18, 2015.

Federal Deposit Insurance Corporation

**Pamela Johnson,**

*Regulatory Editing Specialist.*



## INSTITUTIONS IN LIQUIDATION

(In alphabetical order)

FDIC ref. No.	Bank name	City	State	Date closed
10512 .....	Capitol City Bank & Trust Company .....	Atlanta .....	GA .....	2/13/2015

[FR Doc. 2015-03735 Filed 2-23-15; 8:45 am]

BILLING CODE 6714-01-P

**FEDERAL RESERVE SYSTEM****Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB**

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

**SUMMARY:** Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve 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.

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Acting Clearance Officer—John Schmidt—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452-3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following information collection:

**Report title:** Disclosure Requirements in Connection with Regulation DD (Truth in Savings Act).

**Agency form number:** Regulation DD.  
**OMB control number:** 7100-0271.

**Frequency:** Monthly.

**Reporters:** State member banks, branches & agencies of foreign banks, commercial lending companies, and Edge Act or agreement corporations.

**Estimated annual reporting hours:**  
Account disclosures: 12,504 hours;  
Change in terms notices: 18,756 hours;  
Notices prior to maturity: 18,756 hours;  
Periodic statement disclosure: 100,032 hours; and Advertising: 6,252 hours.

**Estimated average hours per response:**  
Account disclosures: 1 hour; Change in terms notices: 1.5 hours; Notices prior to maturity: 1.5 hours; Periodic statement disclosure: 8 hours; and Advertising: 30 minutes.

**Number of respondents:** 1,042.

**General description of report:** This information collection is mandatory pursuant section 269 of Truth in Savings Act (TISA) (12 U.S.C. 4308), which authorizes the Consumer Financial Protection Bureau (CFPB) to issue regulations to carry out the provisions of the act. The Board's imposition of the disclosure requirements on Federal Reserve supervised institutions is authorized by the Dodd-Frank amendments to TISA (12 U.S.C. 4309), and the provisions of Regulation DD (12 CFR 1030.1(a), 1030.2(j)). An institution's disclosure obligations under Regulation DD are mandatory. The Federal Reserve does not collect any information; therefore, no issue of confidentiality arises.

**Abstract:** TISA was contained in the Federal Deposit Insurance Corporation Improvement Act of 1991. The purpose of TISA and its implementing regulation is to assist consumers in comparing deposit accounts offered by institutions, principally through the disclosure of fees, the annual percentage yield (APY), and other account terms. TISA requires depository institutions to disclose key terms for deposit accounts at account opening, upon request, when changes in terms occur, and in periodic statements. It also includes rules about advertising for deposit accounts. TISA does not provide exemptions from compliance for small institutions.

On July 21, 2011, rulemaking authority for TISA was transferred from the Board to the CFPB under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). In December 2011, the CFPB

published an interim final rule establishing its own Regulation DD to implement TISA at 12 CFR part 1030 that substantially duplicated the Board's Regulation DD. The Board repealed its version of Regulation DD (12 CFR part 230) effective June 30, 2014.

**Current Actions:** On December 11, 2014, the Federal Reserve published a notice in the **Federal Register** (79 FR 73583) requesting public comment for 60 days on the extension, without revision, of the Disclosure Requirements in Connection with Regulation DD. The comment period for this notice expired on February 9, 2015. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, February 19, 2015.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2015-03684 Filed 2-23-15; 8:45 am]

BILLING CODE 6210-01-P

**FEDERAL RESERVE SYSTEM****Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 11, 2015.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Michael Jenò Paulucci*, Palm Coast, Florida; to acquire voting shares of Republic Bancshares, Inc., and thereby indirectly acquire voting shares of

Republic Bank, Inc., both in Duluth, Minnesota.

Board of Governors of the Federal Reserve System, February 19, 2015.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2015-03719 Filed 2-23-15; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 20, 2015.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Merchants & Farmers Bancshares, Inc.*, Leesville, Louisiana; to merge with Vernon Bancshares, Inc., and thereby indirectly acquire Vernon Bank, both in Leesville, Louisiana.

2. *United Community Banks, Inc.*, Blairsville, Georgia, to merge with MoneyTree Corporation, and thereby indirectly acquire First National Bank, both in Lenoir City, Tennessee.

B. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier,

Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *American Bancor, Ltd.*, Dickinson, North Dakota; to acquire 100 percent of the voting shares of United Community Bank of North Dakota, Leeds, North Dakota.

2. *Landmark Investor Group, Inc.*, Eden Prairie, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Landmark Community Bank, National Association, Isanti, Minnesota.

Board of Governors of the Federal Reserve System, February 19, 2015.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2015-03718 Filed 2-23-15; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 11, 2015.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02210-2204.

1. *New Hampshire Mutual Bancorp*, Manchester, New Hampshire (MHC), to establish MillRiver Trust Company, Concord, New Hampshire (MillRiver), and transfer the existing trust business from MHC's subsidiary banks,

Merrimack County Savings Bank, Concord, New Hampshire and Meredith Village Savings Bank, Meredith, New Hampshire to MillRiver, and thereby engage in trust company, financial advisory and transaction activities, and the sale of insurance in a town of less than 5,000 in population, pursuant to sections 225.28(b)(5), (b)(6), (b)(7) and (b)(11)(iii)(A) of Regulation Y.

B. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *First NBC Bank Holding Company*, New Orleans, Louisiana; to acquire 100 percent of the outstanding shares of State Investors Bancorp, Inc. and its subsidiary bank, State-Investors Bank both of Metairie, Louisiana, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. Comment regarding this application must be received by March 20, 2015.

C. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *SSB, Inc., Manistique, Michigan*; to acquire through State Savings Bank of Manistique, Manistique, Michigan, between 10 and 20 percent of the stock of Lasco Development Corporation, Marquette, Michigan. And thereby engage in data processing activities, pursuant to section 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, February 19, 2015.

**Michael J. Lewandowski,**

*Assistant Secretary of the Board.*

[FR Doc. 2015-03720 Filed 2-23-15; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Submission for OMB Review; Comment Request

**AGENCY:** Federal Trade Commission ("Commission" or "FTC").

**ACTION:** Notice.

**SUMMARY:** The FTC intends to conduct an evaluation of Admongo, its advertising literacy program for children ages 8-12. The evaluation will involve a randomized controlled trial of the Admongo online game, using an Internet panel recruited by a market research company. This research will be conducted to further the FTC's mission of protecting consumers from unfair and deceptive marketing. The information collection requirements described below

are being submitted to the Office of Management and Budget (“OMB”) for review as required by the Paperwork Reduction Act (“PRA”).

**DATES:** Comments must be submitted on or before March 26, 2015.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Admongo Evaluation, FTC File No. P085200” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/admongoevaluationpra2>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be addressed to David Givens, Economist, Bureau of Economics, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. Telephone: (202) 326-3397.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

As the nation’s consumer protection agency, the FTC is responsible for enforcing laws that prohibit unfair and deceptive advertising and marketing practices. Part of this mission involves educating consumers, including young consumers. In April 2010, the FTC launched a youth-directed, multi-media advertising literacy campaign called Admongo and distributed accompanying lesson plans to 100,000 educators in every U.S. public school with a fifth or sixth grade class. The Admongo program aims to help children from 8 to 12 become more discerning consumers of marketing information. The program has three broad objectives: (1) Raising awareness of advertising and marketing messages; (2) teaching critical thinking skills that will help children analyze and interpret advertisements; and (3) demonstrating the benefits of being an informed consumer. The program is designed to teach students specific skills: How to identify ads, how to identify the ways advertisers target certain groups of consumers, how to spot persuasive techniques commonly employed by ads,

and how to apply an understanding of advertising techniques to make smarter purchase decisions. The campaign includes an online game, in-school lesson plans, training videos for teachers, and sample ads that can be used at home and in the classroom.

The public can utilize individual components of Admongo as desired, or alternatively, schools can integrate all the components to build a cohesive unit on advertising literacy. All materials are free and can be viewed at [www.admongo.gov](http://www.admongo.gov).

The proposed evaluation is designed to assess the impact of the Admongo online game. The game is an interactive teaching tool in which players advance to higher levels by mastering progressively more sophisticated topics in advertising. Players start by identifying ads, including logos and product placement; they advance to learning about the elements of advertising (graphics, copy, video, and audio) and then how advertisers target their ads. The game culminates in players creating their own video ad to target a specific audience.

The proposed evaluation seeks to measure the effect of playing the Admongo game on a child’s level of advertising literacy, as measured by a test specially written for this purpose by FTC staff. The online game is the one component of the Admongo program that children can most easily discover, engage with, and learn from on their own. Cost effectiveness data will enable FTC staff to evaluate both this program and the potential use of other similar programs in the future. The FTC is particularly interested in the effect of game play on the ability to interpret real ads (*i.e.*, to differentiate explicit and implied claims, identify particular persuasive techniques, and understand why they were chosen, etc.) and the ways in which the game’s effect varies by age and other family and demographic characteristics.

**II. Paperwork Reduction Act**

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must get OMB approval for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c).

On March 3, 2014, the FTC sought public comment on the information collection requirements associated with the proposed Admongo evaluation study. One comment was received. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, the

Commission is providing this second opportunity for public comment.

*A. Description of the Collection of Information and Proposed Use*

Subject to OMB approval, the FTC will conduct a randomized trial of the Admongo online game, involving 800 students, ages 8-12. A market research contractor will select students for participation from among its existing panelists. Students must have parental permission to participate in the evaluation. A randomly selected half of the participants will be assigned to a treatment group, and the remaining students will be assigned to a control group.

Treatment students will be instructed to play the Admongo online game from their homes for one hour and then to complete an advertising literacy test (also online) within the allotted time (20 minutes). To ensure that each treatment student’s true exposure to the game is recorded accurately, her time spent playing (and other measures of her performance within the game) will be monitored and logged by the game’s server. Control students will be instructed to take the test without playing the Admongo game. To ensure that control group members do not play the game, no mention will be made to these students about the existence of Admongo or its connection to the test they are instructed to take. To further ensure the integrity of the evaluation, the market research company will screen out any panelist who has been exposed to Admongo prior to this study.

Admongo’s effect on ad literacy will be estimated from the difference in test scores between the control and treatment groups. Additional variables measuring demographic, financial, and family characteristics of the students, to the extent this information can be captured through a screening questionnaire that is administered to participants’ parents, will increase the precision of Admongo’s estimated impact and will reveal the influence of these factors on ad literacy.

The sample will be selected to mirror the U.S. population of 8-12 year-olds along a number of observable dimensions. However, because participation in the study is voluntary and based on a marketing research Internet panel, the sample may suffer from selection bias and may not constitute a nationally representative sample of 8-12 year-old American children. Therefore, the estimate of Admongo’s impact, derived from this sample, will not generalize to the broader audience of all 8-12 year-old Americans.

### B. Estimated Burden Hours

The proposed evaluation will involve 800 students ages 8–12. The half of the sample assigned to the treatment group will play the Admongo online game for one hour and then take a 20-minute advertising literacy test immediately afterwards. The time burden for the treatment-group totals 533 hours. The half of the sample assigned to the control group will take the test without playing the game. The time burden for the control group will be only the time required to take the test—133 hours in total. Finally, a parent of each participating student will be asked to complete a screening questionnaire, estimated to take 5 minutes. The aggregate time burden to complete the questionnaire totals 67 hours. Therefore, the total time burden for all participants equals 733 hours.

### C. Estimated Costs

Participation will not impose any start-up, capital, or labor expenditures. The costs to respondents involve only the time expended to play the Admongo online game and/or take the online advertising literacy test or complete a screening questionnaire. Participation in the evaluation is voluntary; respondents are drawn from existing pools of Internet panelists (*i.e.*, households that have already indicated they are willing and able to take part in Internet research), and participants and their parents are free to refuse the invitation to participate in any particular study. All students (or their parents) will be compensated at the standard rate by the market research company that recruits them and runs the experiment. Treatment-group students are expected to be compensated more than control-group students due to the former group's substantially larger time commitment.

### D. Analysis of Comments Received

The Commission received one comment regarding the proposed collection of information. The commenter was a private citizen who offered several observations on the proposed study design. First, the commenter pointed out that the sample is restricted to children with Internet access at home, limiting the generalizability of the results. In response, we note that although use of an Internet panel may limit generalizability of results, the household-level information collected from a screening questionnaire administered to parents should at least provide information on how the sample differs from the universe of interest.

Second, the commenter noted that an evaluation of Admongo's effectiveness could be helpful to the FTC's child-directed outreach efforts, but that if few children access Admongo, then a study of its effectiveness is not needed. In response, we point out that the objective of the proposed study is to evaluate the potential effectiveness of the Admongo online game, which is independent of the actual use of the game. A finding of a beneficial effect could lead to wider use of Admongo. Third, the commenter expresses concern that the control and treatment groups may differ in ways that will confound measurement of Admongo's effect. In response, we note that participating students within each age-sex cell will be randomly assigned to control and treatment groups, minimizing the chances that the groups will differ systematically. And, fourth, the commenter suggested asking participants' parents to certify that their children have received no assistance when completing the ad literacy test. In response, we find this a sensible suggestion and will consult with the market research company on the feasibility of obtaining such a certification from parents.

### E. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 26, 2015. Write "Admongo Evaluation, FTC File No. P085200" on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtml>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed

in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>1</sup> Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <http://ftcpublic.commentworks.com/ftc/admongoevaluationpra2>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that Web site.

If you prefer to file your comment on paper, write "Admongo Evaluation, FTC File No. P085200" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 31, 2015. For information on the Commission's privacy policy, including routine uses permitted by the

<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

Privacy Act, see <http://www.ftc.gov/ftc/privacy.htm>. For supporting documentation and other information underlying the PRA discussion in this Notice, see <http://www.reginfo.gov/public/jsp/PRA/pradashboard.jsp>.

**David C. Shonka,**

*Principal Deputy General Counsel.*

[FR Doc. 2015-03672 Filed 2-23-15; 8:45 am]

BILLING CODE 6750-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

[Document Identifier: HHS-OS-0990-New-60D]

**Agency Information Collection Activities; Proposed Collection; Public Comment Request**

**AGENCY:** Office of the Assistant Secretary for Health, Office of Adolescent Health, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995,

the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on the ICR must be received on or before April 27, 2015.

**ADDRESSES:** Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690-6162.

**FOR FURTHER INFORMATION CONTACT:** Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690-6162.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the document identifier HHS-OS-0990-New-60D for reference.

*Information Collection Request Title:* Office of Adolescent Health Teen Pregnancy Prevention, FY 2015-2020 Performance Measure Collection

*Abstract:* The Office of Adolescent Health (OAH), U.S. Department of

Health and Human Services (HHS) is requesting approval by OMB on a new collection. In FY2015, OAH expects to award a second 5-year cohort of TPP grants. Performance Measure data collection is a requirement of all TPP grant awards and is included in the funding announcements. The measures include dissemination, partners, training, health-care linkages, sustainability, reach, dosage, fidelity, quality, and cost, reported separately by grantee/sub grantee and program model.

*Need and Proposed Use of the Information:* The data collection will provide OAH with the data needed to comply with accountability and federal performance requirements for the 1993 Government Performance and Results Act (Pub. L. 103-62); it will inform stakeholders of progress in meeting the goals of the program and of sustainability efforts; and it will provide OAH with metrics for monitoring TPP grantees and will facilitate grantees' continuous quality improvement in program implementation.

*Likely Respondents:* 137 TPP grantees and sub-grantees.

**TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS**

Forms	Type of respondent	Estimated number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Grantee-Level Measures: Dissemination, # of Partners, Number of Facilitators Trained Health-Care Linkages, Sustainability.	Grantee program staff	137	2	1.25	342.5
Program-Level Measures: Participant Reach, Dosage, Fidelity, Cost.	Grantee/Sub-awardee program staff.	137	2	6.45	1,767.3
Total .....	.....	.....	.....	.....	2,109.8

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Darius Taylor,**

*Information Collection Clearance Officer.*

[FR Doc. 2015-03750 Filed 2-23-15; 8:45 am]

BILLING CODE 4168-11-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

[Document Identifier: HHS-OS-0990-0422-30-D]

**Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request**

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for

review and approval. The ICR is for renewal of the approved information collection assigned OMB control number 0990-0422, scheduled to expire on August 31, 2015. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

**DATES:** Comments on the ICR must be received on or before March 26, 2015.

**ADDRESSES:** Submit your comments to *OIRA\_submission@omb.eop.gov* or via facsimile to (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:** Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690-6162.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the OMB

control number 0990-0422 and document identifier HHS-OS-30D for reference.

*Information Collection Request Title:* Education and Training of Healthcare Providers as a Coordinated Public Health Response to Violence Against Women

*Abstract:* The Office on Women's Health (OWH) recently received an approval by OMB 0990-0422 which expires August 31, 2015; however OWH is now requesting a three year extension to further conduct the pilot and evaluation of an eLearning course developed as part of the "Education and Training of Healthcare Providers as a Coordinated Public Health Response to

Violence Against Women Project". The purpose of this data collection is to gather data from healthcare providers who have volunteered to participate in the pilot and evaluation of an e-learning course designed to educate and train healthcare providers on how to respond to intimate partner violence (IPV) against women. Information obtained from this data collection will be used to identify areas of improvement and measure the effectiveness of the e-learning course in educating healthcare providers about IPV, addressing attitudinal barriers to IPV screening, and increasing IPV screening in clinical practice. This data will also help

identify any problems in the navigation and functioning of the e-learning course. The results of this evaluation will assist OWH in making revisions to the course and subsequently coordinating a national launch, making the e-learning course available to healthcare providers across the U.S. All data collection forms and activities will be used within a year time frame.

*Likely Respondents:* The respondents for this pilot and evaluation are healthcare providers (physicians, nurses, and social workers) who are members of professional associations and who provide services in Nevada, Oklahoma, and South Carolina.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Pre-Assessment .....	1600	1	25/60	667
Post-Assessment .....	1600	1	25/60	667
Follow-up Assessment .....	1600	1	25/60	667
Total .....				2001

**Darius Taylor,**

*Information Collection Clearance Officer.*

[FR Doc. 2015-03749 Filed 2-23-15; 8:45 am]

BILLING CODE 4150-33-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[60Day-15-15NR]

**Proposed Data Collections Submitted for Public Comment and Recommendations**

The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, 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. To request more information on the below proposed project or to obtain a copy of the information collection plan and instruments, call 404-639-7570 or send comments to Leroy A. Richardson, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an email to [omb@cdc.gov](mailto:omb@cdc.gov).

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB)

approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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. Written comments should

be received within 60 days of this notice.

**Proposed Project**

Capacity Building Assistance Program: Assessment and Quality Control—New — National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The CDC is requesting the Office of Management and Budget (OMB) to grant a three year approval to collect data that comprises the Training Follow-up Instrument, the Technical Assistance Satisfaction Instrument, and the Capacity Building Assistance (CBA) Key Informant Interview. The purpose of this information collection is to assess how well the CDC's CBA program meets the needs of its consumers in order to enhance its capacity building strategy over time.

The PTCs and CBA providers are funded by CDC/Division of STD Prevention (DSTDP) and Division of HIV/AIDS Prevention (DHAP) over the five-year period to provide capacity-building services that includes information, training, and technical assistance. CBA means the provision of free (not for fee) information, training, technical assistance, and technology transfer to individuals, organizations, and communities to improve their capacity in the delivery and effectiveness of evidence-based

interventions and core public health strategies for HIV prevention. CBA is provided to support health departments, community-based organizations, and healthcare organizations in the implementation, monitoring and evaluation of evidence-based HIV prevention interventions and programs; building organizational infrastructure; and community mobilization to decrease stigma and increase HIV testing in high risk communities. CBA services are requested by health departments, community-based organizations, and healthcare organizations, and also offered proactively. Under this project, there will be no duplication of information collection, because it builds on existing, OMB approved data collection activities.

The PTCs and CBA providers offer classroom and experiential training, web-based training, clinical consultation, and capacity building assistance to maintain and enhance the capacity of healthcare professionals to control and prevent STDs and HIV. The CBA service recipients are healthcare professionals who work at community-based organizations (CBOs), health departments, and healthcare organizations, most of whom are funded directly or indirectly by the CDC, involved in HIV prevention service delivery. Their positions include HIV educator, clinical supervisor, HIV prevention specialist, clinician, outreach worker, case manager director, program coordinator, program manager,

disease intervention specialist, partner services provider, physicians, nurses, and health educators, etc.

CDC is requesting to use two web-based assessments that will be administered to recipients of CBA services: (1) Training Follow-Up Instrument and (2) Technical Assistance Satisfaction Instrument. The first quantitative assessment will be disseminated 90 days after a training event to agency staff who participated in a training activity. It takes approximately 12 minutes to complete. The purpose of this web-based assessment is to determine the training participants' satisfaction with the trainers, training materials, and the course pace, benefits from the training, and CBA needs, how relevant the training was to their work, and whether they were able to utilize the information gained from the training. The second quantitative assessment will be disseminated 45 days after a technical assistance event to agency staff who participated in a technical assistance. This instrument takes approximately 12 minutes to complete. The purpose of the second assessment is to assess participants' satisfaction with the technical assistance they received, intended or actual use of enhanced capacity, barriers and facilitators to use, and benefits of the technical assistance.

The purpose of the CBA Key Informant Interview is to collect qualitative information to assess the impact of CBA services on organizational capacity (e.g., application

of knowledge and skills, potential organization changes as a result of CBA services) and to solicit information about how the CBA program can be improved. Administered by the project contractor, the CBA key informant interviews will be conducted via telephone with a subset of up to 40 recipients of CBA services. The interview takes approximately 15 minutes to complete.

The 7,400 respondents represent an average of the number of health professionals who receive training and technical assistance from the CBA and PTC grantees during the years 2010 and 2011. The data collection is necessary (a) to assess CBA consumers' (community-based organizations, health departments, and healthcare organizations) satisfaction with and short-term outcomes from the overall CBA program as well as specific elements of the CBA program; (b) to improve CBA services and enhance the Capacity Building Branch's national capacity building strategy over time; (c) to assess the performance of the grantees in delivering training and technical assistance and to standardize the registration processes across the two CBA programs (i.e., the PTC program and the CBA program) and multiple grantees funded by each program.

There are no costs to respondents other than their time. The estimated annualized burden hours for this data collection activity are 3,710 hours.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Healthcare professionals .....	Training Follow-up Instrument .....	3,700	2	15/60	1,850
	Technical Assistance Satisfaction Instrument.	3,700	2	15/60	1,850
	CBA Key Informant Interview .....	40	1	15/60	10
Total .....	.....	.....	.....	.....	3,710

**Leroy A. Richardson,**  
*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2015-03618 Filed 2-23-15; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**[30Day-15-0900]**

**Agency Forms Undergoing Paperwork Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget

(OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of

the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570 or send an email to [omb@cdc.gov](mailto:omb@cdc.gov). Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395-5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Contact Investigation Outcome Reporting Forms (0920-0900)—Revision—(expiration date: October 31, 2017)—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Division of Global Migration and Quarantine (DGMQ), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Centers for Disease Control and Prevention (CDC), Division of Global

Migration and Quarantine (DGMQ) requests revision to a currently approved information collection, OMB Control No 0920-0900, Contact Investigation Outcome Reporting Forms. CDC is requesting the addition of Ebola-specific information collection tools to supplement the Centers for Disease Control and Prevention’s (CDC) routine contact investigation activities so that CDC can better assess the risk to individuals who may have been exposed to a confirmed case of Ebola while traveling to or within the United States. These forms were approved by OMB under an emergency clearance, OMB Control No 0920-1032. The additional forms to be added are as follows:

- Ebola Airline passenger exposure questionnaire—This contact investigation form gathers information from airline passengers who traveled on plane(s) and sat within a 3 foot area around the suspected case and travel companions of the suspected case to determine the level of exposure and risk, as well as other passengers who may have had contact with the case’s bodily fluids. Information gathered in this form is shared with the CDC to determine risk level. Risk levels are outlined in *CDC’s Movement and Monitoring Guidance*.
- Ebola exposure Assessment Flight Crew—The flight exposure questionnaire is used to ascertain the same relevant information included in the passenger questionnaire for all crew who worked on flight(s) and came into contact with Ebola patient(s).
- Ebola exposure Assessment Cleaning Crew—This form collects the same information as the flight crew exposure questionnaire, used to

determine the level of exposure a member of the cleaning crew who serviced a flight with an ill patient(s).

- Ebola exposure Assessment Airport or other port of entry staff—This questionnaire is utilized for airport staff who may have come into contact with a person ill with Ebola. Airport staff is identified through conversations with airport authority to determine which employees carried out tasks that would have put them in contact with the ill person or their body fluids.

- Passengers of other commercial conveyance Ebola exposure questionnaire—This questionnaire collects the same information as the airline passenger questionnaire but will be utilized for passengers of commercial conveyance that is land- or waterborne.

- Finally, the introduction and confirmation script is to be used by CDC staff manning open call lines available for persons who traveled on planes that carried suspected or confirmed patients with Ebola. As with the other questionnaires, this script assesses the risk of a plan passenger who was not in the immediate vicinity of the Ebola patient but still has concerns about the level of exposure and risk of contracting the virus.

CDC is not proposing any changes to the routine contact investigation forms already approved under this information collection request.

The total burden associated with this revision is 10,949 hours, including both standard contact investigation forms and updated forms to account for Ebola transmission. There are no costs to respondents other than their time.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Type of respondent	Form name	Number of respondents	Number of responses per	Average burden per response
State/local health department staff .....	General Contact Investigation Outcome Reporting Form (Air).	12	1	5/60
Cruise Ship Physicians/Cargo Ship Managers	General Contact Investigation Outcome Reporting Form (Maritime—word version).	100	1	5/60
Cruise Ship Physicians/Cargo Ship Managers	General Contact Investigation Outcome Reporting Form (Maritime—Excel version).	100	1	5/60
State/local health department staff .....	General Contact Investigation Outcome Reporting Form (Land).	12	1	5/60
State/local health department staff .....	TB Contact Investigation Outcome Reporting Form (Air).	1,244	1	5/60
Cruise Ship Physicians/Cargo Ship Managers	TB Contact Investigation Outcome Reporting Form (Maritime—word version).	150	1	5/60
Cruise Ship Physicians/Cargo Ship Managers	TB Contact Investigation Outcome Reporting Form (Maritime—Excel version).	150	1	5/60
State/local health department staff .....	Measles Contact Investigation Outcome Reporting Form (Air).	964	1	5/60
Cruise Ship Physicians/Cargo Ship Managers	Measles Contact Investigation Outcome Reporting Form (Maritime—word version).	63	1	5/60



## ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per	Average burden per response
Cruise Ship Physicians/Cargo Ship Managers	Measles Contact Investigation Outcome Reporting Form (Maritime—excel version).	63	1	5/60
State/local health department staff .....	Rubella Contact Investigation Outcome Reporting Form (Air).	95	1	5/60
Cruise Ship Physicians/Cargo Ship Managers	Rubella Contact Investigation Outcome Reporting Form (Maritime—word version).	12	1	5/60
Cruise Ship Physicians/Cargo Ship Managers	Rubella Contact Investigation Outcome Reporting Form (Maritime—excel version).	12	1	5/60
Passenger .....	Ebola Airline Exposure Assessment Passenger.	3,400	2	20/60
Flight Crew .....	Ebola Airline Exposure Assessment Flight Crew.	2,400	2	20/60
Cleaning Crew .....	Ebola Airline Exposure Assessment Cleaning Crew.	1,200	2	20/60
Airport or Other Port of Entry Staff .....	Ebola Airline Exposure Assessment Airport or Other Port of Entry Staff.	1,000	2	20/60
Passengers on other commercial conveyances.	Ebola Exposure Questionnaire for Passengers on other commercial conveyances.	1,800	2	20/60
Traveler .....	Script—Introduction and Confirmation .....	50,000	1	5/60

**Leroy A. Richardson,**

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015-03616 Filed 2-23-15; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention (CDC)

[60Day-15-14APJ]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, 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. To request more information on the below proposed project or to obtain a copy of the information collection plan and instruments, call 404-639-7570 or send comments to Leroy A. Richardson, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an email to [omb@cdc.gov](mailto:omb@cdc.gov).

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. Comments are invited on: (a)

Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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. Written comments should be received within 60 days of this notice.

#### Proposed Project

Using Rapid Assessment Methods to Understand Issues in HIV Prevention, Care and Treatment in the United

States—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

The Centers for Disease Control and Prevention requests approval for a 3-year clearance to collect data using rapid qualitative inquiries to understand issues related to HIV prevention, care, and treatment in the United States. Rapid inquiries are concentrated data collection and iterative data analytic efforts focused on timely and relevant responses to urgent issues and research questions. Although we will collect the majority of data using qualitative methods, many studies covered under this generic information collection, will involve a mixed methods approach for data collection.

The rapid inquiries will include multiple well-established qualitative methodologies, which may include but not be limited to in-depth individual interviews, focus groups, direct observations, case studies, document reviews, or brief quantitative surveys assessing demographics, behaviors, attitudes, intentions, beliefs, or other attributes of the respondents. In some assessments, additional contextual information may be collected, such as information about the respondents' community, workplaces, or organizations and places where they interact. CDC expects to qualitative data from approximately 1,800 respondents, assuming three research studies per year with each research study collecting data from 200 respondents.

For all proposed studies under this generic information collection, our

efforts are expected to provide insight regarding a wide array of HIV-related programs designed for various populations throughout the United States, including but not limited to: Persons living with HIV/AIDS (PLWH); persons at elevated risk for acquiring new HIV infection or transmitting existing HIV infection to others; clinicians or other HIV care providers; men who have sex with men (MSM); transgender persons; injection and non-injection drug users; incarcerated populations or ex-prisoners; commercial sex workers; male and female heterosexual groups at high risk for HIV infection; and other providers and organizations (e.g., health departments, community-based organizations, public and private health clinics, advocacy groups, community groups, or other governmental and nongovernmental organizations) serving or otherwise interacting with persons at greatest need for HIV prevention, care, and treatment.

Recruitment procedures will vary slightly based on the target population and research design of each information

collection submitted under this generic information collection. Partner organizations such as public and private health clinics and community-based organizations that serve the target populations in the respective geographic locations may be contacted for their assistance in recruitment of potential respondents. Respondents may be identified and selected as key informants and invited to participate by contractor staff members.

Sampling recruitment methods may include, but not be limited to: Use of social networking sites, the Internet, print marketing materials, and other methods to find and enroll respondents into the research study.

All data collection tools will be pre-tested and interviews conducted by trained personnel. The data collection will take place at a time and place that is convenient to the respondent. Locations will be private. Data collection may be audio-recorded and transcribed with the consent of the respondent.

We anticipate that each screener form will take 5 minutes to complete, contact information forms will take 1 minute to complete, and consent forms will take 5 minutes to complete. We anticipate 75 percent of those eligible to participate will enroll into study. Demographic surveys will take 15 minutes to complete. In-depth interviews, focus groups or other data collections are expected to take an average 45 minutes for healthcare providers and 60 minutes (1 hour) for general respondents to complete.

The data collections supported under this generic information collection will be used to provide insight regarding barriers and facilitators to HIV prevention, care, and treatment in the United States and territories, and thus suggest ways CDC might improve programmatic activities along the continuum of HIV prevention, treatment and care.

The total estimated annualized burden hours are 918. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
General Public—Adults .....	Study Screener .....	1,600	1	5/60	133
General Public—Adults .....	Contact Information Form .....	600	1	1/60	10
General Public—Adults .....	Consent Form .....	600	1	5/60	50
General Public—Adults .....	Demographic Survey .....	500	1	15/60	125
General Public—Adults .....	Interview Guide .....	500	1	1	500
General Public—Adults .....	Provider Demographic Survey .....	100	1	15/60	25
General Public—Adults .....	Provider Interview Guide .....	100	1	45/60	75
<b>Total .....</b>	.....	.....	.....	.....	<b>918</b>

**Leroy A. Richardson,**  
*Chief, Information Collection Review Office,  
 Office of Scientific Integrity, Office of the  
 Associate Director for Science, Office of the  
 Director, Centers for Disease Control and  
 Prevention.*

[FR Doc. 2015-03617 Filed 2-23-15; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, Announces the Following Meeting**

*Name:* ICD-10 Coordination and Maintenance (C&M) Committee meeting.

*Time and Date:* 9:00 a.m.–5:00 p.m., March 18–19, 2015

*Place:* Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 240 people. We will be broadcasting the meeting live via Webcast at <http://www.cms.gov/live/>.

*Security Considerations:* Due to increased security requirements CMS has instituted stringent procedures for entrance into the building by non-government employees. Attendees will need to present valid government-issued picture identification, and sign-in at the security desk upon entering the building.

Attendees who wish to attend the March 18–19, 2015 ICD-10-CM C&M

meeting must submit their name and organization by March 13, 2015, for inclusion on the visitor list. This visitor list will be maintained at the front desk of the CMS building and used by the guards to admit visitors to the meeting.

Participants who attended previous Coordination and Maintenance meetings will no longer be automatically added to the visitor list. You must request inclusion of your name prior to each meeting you wish attend.

Please register to attend the meeting on-line at: <http://www.cms.hhs.gov/apps/events/> Please contact Mady Hue (410-786-4510 or [Marilu.hue@cms.hhs.gov](mailto:Marilu.hue@cms.hhs.gov)), for questions about the registration process.

*Purpose:* The ICD-10 Coordination and Maintenance (C&M) Committee is a public forum for the presentation of proposed modifications to the International Classification of Diseases,

Tenth Revision, Clinical Modification and ICD-10 Procedure Coding System.

*Matters For Discussion:* Tentative agenda items include:

March 18-19, 2015

ICD-10-PCS Topics:

Administration of Blincyto

(blinatumomab)

Irreversible Electroporation

Administration of Idarucizumab

Coronary Orbital Atherectomy

Administration of CRESEMBA

(Isavuconazonium)

Insertion of Tibial Insert

Removal of Thrombus and Emboli

Organ Perfusion for Transplants

Fenestrated Grafts

Creation of Atrial Septal Defect

Pediatric Congenital Heart Procedures

Modified Blalock-Taussig Shunt

Arterial Switch Operation

Rastelli Procedure

Repair of Complete Common

Atrioventricular Canal Defect

Truncus Arteriosus Repair

Balloon Atrial Septostomy

Addenda and Key Updates

ICD-10 Topics:

ICD-10-PCS X Code

ICD-10 MS-DRGs Impact Update

End to End Testing

ICD-10-CM Diagnosis Topics:

Vaccine and prophylactic

immunotherapy administration

External cause codes for over exertion;

repetitive motion

Acute Kidney Injury (AKI)

Chronic Kidney Disease (CKD)

Hepatic Encephalopathy (HE)

Acute Pancreatitis

Exocrine Pancreatic Insufficiency

Childhood Asymmetric Labium Majus

Enlargement (CALME)

Longitudinal Vaginal Septum

Prepubertal Vulvar Bleeding

Prepubertal Vulvovaginitis

Transverse Septum

Interruption of Aortic Arch

Congenital malformations of aorta

Observation and evaluation of newborns for suspected and ruled-out conditions

ICD-10-CM Addendum

Agenda items are subject to change as priorities dictate.

**Note:** CMS and NCHS no longer provide paper copies of handouts for the meeting. Electronic copies of all meeting materials will be posted on the CMS and NCHS Web sites prior to the meeting at [http://www.cms.hhs.gov/ICD9ProviderDiagnosticCodes/03\\_meetings.asp#TopOfPage](http://www.cms.hhs.gov/ICD9ProviderDiagnosticCodes/03_meetings.asp#TopOfPage) and [http://www.cdc.gov/nchs/icd/icd9cm\\_maintenance.htm](http://www.cdc.gov/nchs/icd/icd9cm_maintenance.htm).

*Contact Persons For Additional Information:* Donna Pickett, Medical

Systems Administrator, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road Hyattsville, Maryland 20782, email [dfp4@cdc.gov](mailto:dfp4@cdc.gov), telephone 301-458-4434 (diagnosis); Mady Hue, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Boulevard, Baltimore, Maryland, 21244, email [marilu.hue@cms.hhs.gov](mailto:marilu.hue@cms.hhs.gov), telephone 410-786-4510 (procedures). The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2015-03683 Filed 2-23-15; 8:45 am]

**BILLING CODE 4160-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Request for Nominations of Candidates To Serve on the World Trade Center Health Program Scientific/Technical Advisory Committee (the STAC or the Committee), Centers for Disease Control and Prevention, Department of Health and Human Services

The CDC is soliciting nominations for membership on the World Trade Center (WTC) Health Program Scientific/Technical Advisory Committee (STAC).

Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111-347) was enacted on January 2, 2011, amending the Public Health Service Act (PHS Act) by adding Title XXXIII establishing the WTC Health Program within HHS (Title XXXIII of the PHS Act is codified at 42 U.S.C. 300mm to 300mm-61). Section 3302(a) of the PHS Act established the WTC Health Program Scientific/Technical Advisory Committee (STAC). The STAC is governed by the provisions of the Federal Advisory Committee Act, as amended (Pub. L. 92-463, 5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees in the Executive Branch. PHS Act Section 3302(a)(1) establishes that the STAC will: Review scientific and medical evidence and make recommendations to the [WTC Program]

Administrator on additional WTC Program eligibility criteria and on additional WTC-related health conditions. Section 3341(c) of the PHS Act requires the WTC Program Administrator to also consult with the STAC on research regarding certain health conditions related to the September 11 terrorist attacks. The STAC may also be consulted on other matters related to implementation and improvement of the WTC Health Program, as outlined in the PHS Act, at the discretion of the WTC Program Administrator. In accordance with Section 3302(a)(2) of the PHS Act, the WTC Program Administrator will appoint the members of the committee, which must include at least:

- 4 occupational physicians, at least two of whom have experience treating WTC rescue and recovery workers;
- 1 physician with expertise in pulmonary medicine;
- 2 environmental medicine or environmental health specialists;
- 2 representatives of WTC responders;
- 2 representatives of certified-eligible WTC survivors;
- 1 industrial hygienist;
- 1 toxicologist;
- 1 epidemiologist; and
- 1 mental health professional.

At this time the Administrator is seeking nominations for members fulfilling the following categories:

- Epidemiologist
- Environmental medicine or environmental health specialist
- Occupational physician with experience treating WTC rescue and recovery workers;
- Occupational physician
- Representative of WTC responders;
- Toxicologist

Other members may be appointed at the discretion of the WTC Program Administrator.

A STAC member's term appointment may last 3 years. If a vacancy occurs, the WTC Program Administrator may appoint a new member who fulfills the same membership category as the predecessor. STAC members may be appointed to successive terms. The frequency of committee meetings shall be determined by the WTC Program Administrator based on program needs. Meetings may occur up to four times a year. Members are paid the Special Government Employee rate of \$250 per day, and travel costs and per diem are included and based on the Federal Travel Regulations.

Any interested person or organization may self-nominate or nominate one or more qualified persons for membership.

Nominations must include the following information:

- The nominee's contact information and current occupation or position;
- The nominee's resume or curriculum vitae, including prior or current membership on other National Institute for Occupational Safety and Health (NIOSH), CDC, or HHS advisory committees or other relevant organizations, associations, and committees;
- The category of membership (epidemiologist, environmental medicine or environmental health specialist, occupational physician with experience treating WTC rescue and recovery workers, occupational physician, representative of WTC responders, or toxicologist) that the candidate is qualified to represent;
- A summary of the background, experience, and qualifications that demonstrates the nominee's suitability for the nominated membership category;
- Articles or other documents the nominee has authored that indicate the nominee's knowledge and experience in relevant subject categories; and
- A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in STAC meetings, and has no known conflicts of interest that would preclude membership on the Committee.

STAC members will be selected upon the basis of their relevant experience and competence in their respective categorical fields. The information received through this nomination process, in addition to other relevant sources of information, will assist the WTC Program Administrator in appointing members to serve on the STAC. In selecting members, the WTC Program Administrator will consider individuals nominated in response to this **Federal Register** notice as well as other qualified individuals.

The CDC is committed to bringing greater diversity of thought, perspective, and experience to its advisory committees. Nominees from all races, genders, ages, and persons living with disabilities are encouraged to apply. Nominees must be U.S. citizens.

Candidates invited to serve will be asked to submit the "Confidential Financial Disclosure Report," OGE Form 450. This form is used by CDC to determine whether there is a financial conflict between that person's private interests and activities and their public responsibilities as a Special Government Employee as well as any appearance of a loss of impartiality, as defined by Federal regulation. The form may be viewed and downloaded at <http://www.oge.gov/Forms-Library/OGE-Form-450-Confidential-Financial-Disclosure->

*Report*. This form should not be submitted as part of a nomination.

**DATES:** Nominations must be submitted (postmarked or electronically received) by March 31, 2015.

Submissions must be electronic or by mail. Submissions should reference docket 229-C. Electronic submissions: You may electronically submit nominations, including attachments, to [nioshdocket@cdc.gov](mailto:nioshdocket@cdc.gov). Attachments in Microsoft Word are preferred. Regular, Express, or Overnight Mail: Written nominations may be submitted (one original and two copies) to the following address only: NIOSH Docket 229-C, c/o Mia Wallace, Committee Management Specialist, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1600 Clifton Rd. NE., MS: E-20, Atlanta, Georgia 30333. Telephone and facsimile submissions cannot be accepted. For further information contact: Paul Middendorf, Senior Health Scientist, 1600 Clifton Rd. NE., MS: E-20, Atlanta, GA 30333; telephone (404) 498-2500 (this is not a toll-free number); email [pmiddendorf@cdc.gov](mailto:pmiddendorf@cdc.gov).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2015-03682 Filed 2-23-15; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-10407]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register**

concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by March 26, 2015.

**ADDRESSES:** When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395-5806 OR Email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov).

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>.
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov).
3. Call the Reports Clearance Office at (410) 786-1326.

**FOR FURTHER INFORMATION CONTACT:** Reports Clearance Office at (410) 786-1326.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies

to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Summary of Benefits and Coverage and Uniform Glossary; *Use:* Section 2715 of the PHS Act directs the Department of Health and Human Services (HHS), the Department of Labor (DOL), and the Department of the Treasury (collectively, the Departments), in consultation with the National Association of Insurance Commissioners (NAIC) and a working group comprised of stakeholders, to “develop standards for use by a group health plan and a health insurance issuer in compiling and providing to applicants, enrollees, and policyholders and certificate holders a summary of benefits and coverage explanation that accurately describes the benefits and coverage under the applicable plan or coverage.” To implement these disclosure requirements, collection of information requests relate to the provision of the following: Summary of benefits and coverage, which includes coverage examples; a uniform glossary of health coverage and medical terms; and a notice of modifications. *Form Number:* CMS-10407 (OMB control number 0938-1146); *Frequency:* Annual; *Affected Public:* Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 126,500; *Number of Responses:* 41,153,858; *Total Annual Hours:* 322,411. (For policy questions regarding this collection, contact Heather Raeburn at 301-492-4224.)

Dated: February 18, 2015.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2015-03650 Filed 2-23-15; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

[OMB No.: 0970-0139]

#### Uniform Project Description (UPD) Project Narrative Format for Discretionary Grant Application Forms; Correction

**AGENCY:** Administration for Children and Families, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Administration for Children and Families published a document in the **Federal Register** of February 17, 2015, concerning a request for comments on a proposed information collection. The document contained an incorrect citation.

**FOR FURTHER INFORMATION CONTACT:** Christopher Beach, Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration, Administration for Children and Families, telephone (202) 401-1539.

*Correction:* In the **Federal Register** of February 17, 2015, in FR. Doc. 2015-03144, on page 8324, in the third column, correct the last sentence of the “Description” caption to read: “Guidance for the content of information requested in the Uniform Project Description is based in 45 CFR 75.203 and Appendix I to 45 CFR part 75.”

**Christopher Beach,**

*Senior Grants Policy Specialist, Office of Administration.*

[FR Doc. 2015-03627 Filed 2-23-15; 8:45 am]

**BILLING CODE 4184-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2015-D-0235]

#### Evaluating the Effectiveness of New Animal Drugs for the Reduction of Pathogenic Shiga Toxin-Producing *Escherichia coli* in Cattle; Draft Guidance for Industry; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (GFI #229) entitled “Evaluating the Effectiveness of New Animal Drugs for the Reduction of Pathogenic Shiga

Toxin-Producing *E. coli* in Cattle.” The purpose of this document is to provide recommendations to industry relating to study design and describe criteria the Center for Veterinary Medicine (CVM) thinks are the most appropriate for the evaluation of the effectiveness of new animal drugs that are intended to reduce pathogenic Shiga toxin-producing *E. coli* (STEC) in cattle.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 27, 2015.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Communications Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Joshua R. Hayes, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-402-0651, [Joshua.hayes@fda.hhs.gov](mailto:Joshua.hayes@fda.hhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

FDA is announcing the availability of a draft guidance for industry (GFI #229) entitled “Evaluating the Effectiveness of New Animal Drugs for the Reduction of Pathogenic Shiga Toxin-Producing *E. coli* in Cattle.” This draft guidance provides recommendations to industry relating to study design and describes criteria CVM thinks are the most appropriate for the evaluation of the effectiveness of new animal drugs that are intended to reduce pathogenic STEC in cattle. It discusses general considerations regarding the development of protocols, study conduct, animal welfare, substantial evidence of effectiveness, experimental parameters, nutritional content of experimental diets, and the assessment of drug concentrations in experimental diets. It also discusses the studies and analyses CVM recommends for sponsors

to substantiate the effectiveness of pathogenic STEC reduction drugs.

## II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032.

## IV. Comments

Interested persons may submit either electronic comments regarding this document to <http://www.regulations.gov> or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

## V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either <http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm> or <http://www.regulations.gov>.

Dated: February 17, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–03694 Filed 2–23–15; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2014–N–0595]

#### Environmental Protection Agency and Food and Drug Administration Advice About Eating Fish; Closure of the Public Comment Period

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

**ACTION:** Notice; closure of the public comment period.

**SUMMARY:** On June 11, 2014, the Food and Drug Administration (FDA), in coordination with the U.S. Environmental Protection Agency (EPA), (the Agencies), released for public comment draft fish consumption advice entitled “Fish: What Pregnant Women and Parents Should Know.” The draft advice would update the Agencies’ consumption advice and recommend that women who are pregnant (or might become pregnant) or nursing and anyone who prepares food for young children eat certain amounts and types of fish in order to improve health and developmental outcomes while minimizing risk from methylmercury in fish. The draft advice is consistent with recommendations in the *Dietary Guidelines for Americans 2010*, which are issued every 5 years by the U.S. Departments of Agriculture and Health and Human Services. FDA and EPA are now announcing the closure of the public comment period.

**DATES:** The comment period will close on March 26, 2015.

**ADDRESSES:** Comments may continue to be submitted until March 26, 2015. Submit electronic comments to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. FDA will share with EPA all comments submitted to the FDA docket.

#### FOR FURTHER INFORMATION CONTACT:

FDA: William Jones, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1422, email: [William.Jones@fda.hhs.gov](mailto:William.Jones@fda.hhs.gov); EPA: Jeffrey Bigler, MS–4305T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460, 202–566–0389, email: [bigler.jeff@epa.gov](mailto:bigler.jeff@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 11, 2014 (79 FR 33559), FDA, in coordination with EPA, announced the availability of the draft

updated fish advice, entitled “Fish: What Pregnant Women and Parents Should Know,” for public comment (the notice). The draft advice is available electronically at <http://www.fda.gov/Food/FoodborneIllnessContaminants/Metals/ucm393070.htm>. The notice stated that the comment period would be open until 30 days after the last transcript became available from either the FDA Risk Communication Advisory Committee (RCAC) meeting to be held on the draft advice or any other public meeting that the Agencies chose to hold on the draft advice (79 FR 33559). The notice also stated that the date for closure of public comment will be published in a future notice in the **Federal Register** (id.).

The RCAC meeting was held on November 3 and 4, 2014, and the transcript of the meeting became available on December 2, 2014. The meeting addressed the draft updated fish advice in great detail and included presentations by the Agencies on both the substance and the presentation of the draft advice, and included presentations by invited experts in risk communications. The meeting also provided members of the public with an opportunity to express their views to the RCAC and to members of the Agencies who were in attendance. A number of organizations and private citizens availed themselves of this opportunity. For these reasons, FDA and EPA have concluded that the thoroughness of this public meeting, in addition to the public comments received and still to be received, remove the need for additional public meetings and are hereby closing the public comment period on March 26, 2015. The transcript from the RCAC meeting is available electronically at <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/RiskCommunicationAdvisoryCommittee/UCM425352.pdf> and <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/RiskCommunicationAdvisoryCommittee/UCM425353.pdf>.

Dated: February 18, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–03691 Filed 2–23–15; 8:45 am]

**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2015-N-0001]

**Anesthetic and Analgesic Drug Products Advisory Committee; Notice of Meeting; Correction**

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

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration is correcting a notice entitled “Anesthetic and Analgesic Drug Products Advisory Committee; Notice of Meeting” that appeared in the **Federal Register** of February 6, 2015 (80 FR 6731). The document announced a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The document was published with the incorrect docket number. This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Lisa Granger, Office of Policy, Planning, Legislation, and Analysis, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3330, Silver Spring, MD 20993, 301-796-9115.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 6, 2015, in FR Doc. 2015-02408, on page 6731, the following correction is made:

On page 6731, in the first column, in the Docket No. heading, “[Docket No. FDA-2011-N-0824]” is corrected to read “[Docket No. FDA-2015-N-0001]”.

Dated: February 17, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-03688 Filed 2-23-15; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2015-N-0001]

**Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting**

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

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Neurological Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA’s regulatory issues.

*Date and Time:* The meeting will be held on April 17, 2015, from 8 a.m. to 4 p.m.

*Location:* FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993-0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

*Contact Person:* Jamie Waterhouse, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, [Jamie.Waterhouse@fda.hhs.gov](mailto:Jamie.Waterhouse@fda.hhs.gov), 301-796-3063, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency’s Web site at <http://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

*Agenda:* On April 17, 2015, the committee will discuss the current knowledge regarding the conduct of clinical studies and evaluation of clinical study data for flow diverter technology. FDA is convening this committee to seek expert opinion on scientific and clinical considerations relating to the study design and existing clinical studies, for flow diverter technology indicated for the neurovasculature.

Flow diverters are an endoluminal treatment option for intracranial aneurysms. They are similar to traditional stents in their tubular metal structure but with a significantly higher mesh density. The working principle is that the high-mesh density reduces flow rate into the aneurysm which promotes blood stasis and occlusion of the aneurysm. Flow diverters are advantageous for the treatment of large/

giant wide-neck aneurysms and offer an alternative to other interventional techniques or surgery.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA’s Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 3, 2015. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11:30 a.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 24, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 27, 2015.

Persons attending FDA’s advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams at [Annmarie.Williams@fda.hhs.gov](mailto:Annmarie.Williams@fda.hhs.gov), or 301-796-5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on

public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 17, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-03687 Filed 2-23-15; 8:45 am]

BILLING CODE 4164-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2015-N-0012]

#### Partnership To Develop the Branded Food Products Database for Public Health (R01)

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of the Agricultural Technology Innovation Partnership's (ATIP) Branded Food Products Database for Public Health. ATIP, in conjunction with the U.S. Department of Agriculture (USDA) Agricultural Research Service (ARS) and the International Life Science Institute North America (ILSI North America), has established a public-private partnership to enhance the public's health. The Office of Foods and Veterinary Medicine (OFVM) has grant funds available to help support ATIP consolidate food composition data from manufacturers. OFVM's goal is to monitor the sodium content of branded foods and to make nutrient composition data available to the public.

**DATES:** Important dates are as follows:

1. The application due date is April 2, 2015.
2. The anticipated start date is May 2015.
3. The opening date is February 13, 2015.
4. The expiration date is April 3, 2015.

**ADDRESSES:** For more information, see section III of the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Claudine Kavanaugh, Office of Foods and Veterinary Medicine, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301-796-4647; or Vieda Hubbard, Division of Acquisition Support and Grants, Food and Drug Administration, 5630 Fishers Lane

(HFA-500), Rockville, MD 20857, 240-402-7588.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA.

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Funding Opportunity Description**

RFA-FD-15-005  
93.103

##### *A. Background*

OFVM is interested in monitoring the sodium content of branded foods in the U.S. marketplace. Knowing the nutrient profile of branded foods is critical to FDA's work and to the public's health. Public health experts have linked excessive sodium consumption to hypertension, cardiovascular disease, and other chronic diseases. A database that reflects the sodium content of foods will help OFVM research strategies regarding sodium reduction and help the public maintain healthy diets.

OFVM has funds available for ATIP to compile compositional data for branded foods for the public's benefit. ATIP, through ILSI North America and USDA, has experience engaging the private sector and expertise compiling brand data. With OFVM's fiscal contribution, ATIP will be able to build upon USDA's National Nutrient Database—widely recognized as the gold standard for food compositional data—in a timely fashion. ATIP's database will reflect the breadth and depth of the nation's food supply and will facilitate nutrition analysis and research that otherwise may not be possible.

The research community, healthcare professionals, the food industry, and policymakers will use ATIP's database. For example, drafters of the National Health and Nutrition Examination Survey will be able to more accurately characterize food selection and sodium consumption for Americans. Medical researchers will be able to better link sodium intake to measures of chronic diseases. Food manufacturers will be able to compare information to improve product formulations. Policy-making bodies will be able to develop better guidelines that will promote public health. Ultimately, having more robust sodium data available will allow FDA to develop targeted sodium reduction strategies and the public to better monitor sodium intake.

##### *B. Research Objectives*

ATIP will compile compositional data for branded foods for the public's benefit. The database will include food group information on branded foods and branded restaurant food products. ATIP

will manage a large volume of date-stamped branded product information to link food intake and nutrient composition to dietary patterns recommendations. ATIP will collect and publish comprehensive food compositional data, including sodium content, in a timely fashion.

##### *C. Eligibility Information*

This grant is available solely for ATIP. Through ILSI North America and USDA, respectively, ATIP has existing relationships with industry and years of food compositional data upon which ATIP can build. ATIP has already demonstrated that its database can effectively manage a large volume of date-stamped branded product information. Compiling additional compositional data for branded foods will allow FDA to link sodium intake and composition data to dietary patterns recommendations more efficiently.

#### **II. Award Information/Funds Available**

##### *A. Award Amount*

OFVM has \$35,000 available for a single award to a single grantee—ATIP.

##### *B. Length of Support*

This grant is available for 1 year from the start date.

#### **III. Electronic Application, Registration, and Submission**

Only electronic applications will be accepted. To submit an electronic application in response to this FOA, applicant should first review the full announcement. (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.) For all electronically submitted applications, the following steps are required.

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With System for Award Management (SAM)
- Step 3: Obtain Username & Password
- Step 4: Authorized Organization Representative (AOR) Authorization
- Step 5: Track AOR Status
- Step 6: Register With Electronic Research Administration (eRA) Commons

Steps 1 through 5, in detail, can be found at [http://www07.grants.gov/applicants/organization\\_registration.jsp](http://www07.grants.gov/applicants/organization_registration.jsp). Step 6, in detail, can be found at <https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp>. After you have followed these steps, submit



electronic applications to: <http://www.grants.gov>.

Dated: February 10, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-03690 Filed 2-23-15; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications/contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Centers of Cancer Nanotechnology Excellence (CCNE).

*Date:* March 31–April 2, 2015

*Time:* 5:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Bethesda North Marriott Hotel and Conference Center; 5701 Marinelli Road; North Bethesda, MD 20852.

*Contact Person:* Jeffrey E. DeClue, Ph.D.; Scientific Review Officer; Research Technology and Contract Review Branch; Division of Extramural Activities; National Cancer Institute; 9609 Medical Center Drive, Room 7W238; Bethesda, MD 20892-9750; 240-276-6371; [decluej@mail.nih.gov](mailto:decluej@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Omnibus R03 & R21 SEP-6.

*Date:* April 10, 2015.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove; 9609 Medical Center Drive, Room 7W030; Rockville, MD 20850; (Telephone Conference Call).

*Contact Person:* Caron A. Lyman, Ph.D. Chief, Scientific Review Officer; Research Programs Review Branch; Division of Extramural Activities; National Cancer Institute, NIH; 9609 Medical Center Drive, Room 7W126; Bethesda, MD 20892-9750; 240-276-6348; [lymanc@mail.nih.gov](mailto:lymanc@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Molecular

and Cellular Characterization of Screen-Detected Lesions.

*Date:* April 13, 2015.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center; 5701 Marinelli Road; North Bethesda, MD 20852.

*Contact Person:* Caron A. Lyman, Ph.D.; Chief, Scientific Review Officer; Research Programs Review Branch; Division Of Extramural Activities; National Cancer Institute, NIH; 9609 Medical Center Drive, Room 7W126; Bethesda, MD 20892-9750; 240-276-6348; [lymanc@mail.nih.gov](mailto:lymanc@mail.nih.gov).

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/sep/sep.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 18, 2015.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-03633 Filed 2-23-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke; Special Emphasis Panel Clinical Trials SEP.

*Date:* March 5-6, 2015.

*Time:* 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

*Contact Person:* Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892-9529, 301-435-6033, [rajarams@mail.nih.gov](mailto:rajarams@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 18, 2015.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-03638 Filed 2-23-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Small; Business: Cancer Drug Development and Therapeutics.

*Date:* March 16-17, 2015.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

*Contact Person:* Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301-451-0131, [ltopol@mail.nih.gov](mailto:ltopol@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Infectious Diseases and Microbiology.

*Date:* March 18–19, 2015.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Alexander D. Politis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, [politisa@csr.nih.gov](mailto:politisa@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; AREA applications in Infectious Diseases and Microbiology.

*Date:* March 19, 2015.

*Time:* 8:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, [zhengli@csr.nih.gov](mailto:zhengli@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 18, 2015.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015–03628 Filed 2–23–15; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special

Emphasis; Panel NIAAA Member Conflict Applications—Biomedical Sciences.

*Date:* March 6, 2015.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIAAA, NIH, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, NIH, 5635 Fishers Lane; Room 2085, Rockville, MD 20852, (301) 443–2067, [srinivar@mail.nih.gov](mailto:srinivar@mail.nih.gov).

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis; Panel NIAAA Member Conflict Applications—Epidemiology and Prevention Research.

*Date:* March 20, 2015.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIAAA, NIH, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, NIH, 5635 Fishers Lane; Room 2085, Rockville, MD 20852, (301) 443–2067, [srinivar@mail.nih.gov](mailto:srinivar@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 92.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Supports Awards, National Institutes of Health, HHS)

Dated: February 18, 2015.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015–03635 Filed 2–23–15; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Microbiology, Infectious Diseases and AIDS Initial Review Group; Acquired Immunodeficiency Syndrome Research Review Committee.

*Date:* March 18–19, 2015.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review grant applications.

*Place:* St. Gregory Luxury Hotel & Suites, 2033 M St. Northwest, Washington, DC 20036.

*Contact Person:* Vasundhara Varthakavi, Ph.D., Scientific Review Officer Scientific Review Program NIH/NIAD/DEA/ARRB, 5601 Fishers Lane MSC 9823, Rockville, MD 20852, 240–669–5020, [varthakaviv@niad.nih.gov](mailto:varthakaviv@niad.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 18, 2015.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015–03636 Filed 2–23–15; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Acute and Chronic Neurodegenerative Diseases.

*Date:* March 5–6, 2015.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237-9838, [bhagavas@csr.nih.gov](mailto:bhagavas@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 18, 2015.

**Carolyn Baum,**

*Program Officer, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-03631 Filed 2-23-15; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Center for Scientific Review; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Gliomas.

*Date:* March 9, 2015.

*Time:* 12:00 p.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237-9838, [bhagavas@csr.nih.gov](mailto:bhagavas@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; HIV/AIDS Innovative Research Applications.

*Date:* March 11-12, 2015.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435-1166, [roebuckk@csr.nih.gov](mailto:roebuckk@csr.nih.gov).

*Name of Committee:* AIDS and Related Research Integrated Review Group; AIDS-associated Opportunistic Infections and Cancer Study Section.

*Date:* March 16, 2015.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

*Contact Person:* Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435-1168, [montalve@csr.nih.gov](mailto:montalve@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Basic Research on HIV Persistence.

*Date:* March 17, 2015.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301-435-1050, [freundr@csr.nih.gov](mailto:freundr@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Neural Trauma and Stroke.

*Date:* March 18, 2015.

*Time:* 11:30 a.m. to 5:30 p.m..

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Alexei Kondratyev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301-435-1785, [kondratyevad@csr.nih.gov](mailto:kondratyevad@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: February 18, 2015.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-03630 Filed 2-23-15; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; Tools for Assessment and Improvement of Neurologic Outcomes in Perinatal Medicine.

*Date:* February 24, 2015.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892-9304, (301) 435-6680, [skandasa@mail.nih.gov](mailto:skandasa@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 18, 2015.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-03637 Filed 2-23-15; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NIDCD.

*Date:* March 17, 2015.

*Time:* 2:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators

*Place:* National Institutes of Health, Building 31, Room 3C02, 31 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Andrew J. Griffith, Ph.D., MD, Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 35A Convent Drive, GF 103, Rockville, MD 20892, 301-496-1960, [griffita@nidcd.nih.gov](mailto:griffita@nidcd.nih.gov).

Information is also available on the Institute's/Center's home page: <http://www.nidcd.nih.gov/about/groups/bsc/>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 18, 2015.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-03640 Filed 2-23-15; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Institute on Aging; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Training Grants for Medical Students.

*Date:* March 23, 2015.

*Time:* 11:00 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Isis S. Mikhail, MD, MPH, DRPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301-402-7704, [MIKHAIL@MAIL.NIH.GOV](mailto:MIKHAIL@MAIL.NIH.GOV).

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 18, 2015.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-03634 Filed 2-23-15; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****Center for Scientific Review; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR-14-264 Global "Omics" Approaches Targeting Adverse Pregnancy and Neonatal Outcomes Utilizing Existing Cohorts.

*Date:* March 3, 2015.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Lisa Steele, Ph.D., Scientific Review Officer, PSE IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301-594-6594, [steeleln@csr.nih.gov](mailto:steeleln@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Biomedical Computing and Health Informatics.

*Date:* March 4, 2015.

*Time:* 1:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Rebecca Henry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301-435-1717, [henryr@mail.nih.gov](mailto:henryr@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR13-185: Image-Guided Drug Delivery in Cancer.

*Date:* March 5, 2015.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Mehrdad Mohseni, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7854, Bethesda, MD 20892, 301-435-0484, [mohsenim@csr.nih.gov](mailto:mohsenim@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Research Project Grant.

*Date:* March 9, 2015.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Rebecca Henry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301-435-1717, [henryr@mail.nih.gov](mailto:henryr@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Antimicrobial Resistance and Drug Discovery and Development.

*Date:* March 9–10, 2015.

*Time:* 9:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Tera Bounds, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–2306, [boundst@csr.nih.gov](mailto:boundst@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business; Non-HIV Diagnostics, Food Safety, Sterilization/Disinfection, and Bioremediation.

*Date:* March 12–13, 2015.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Garden Inn, 7301 Waverly Street, Bethesda, MD 20814.

*Contact Person:* Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, RM 3200, MSC 7808, Bethesda, MD 20892, 301–435–1167, [pandyaga@mai.nih.gov](mailto:pandyaga@mai.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Biochemistry and Biophysical Chemistry.

*Date:* March 12–13, 2015.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* David R Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, (301)–437–7927, [jollieda@csr.nih.gov](mailto:jollieda@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business PAR Panel: Safe and Effective Instruments and Devices for Use in Neonatal and Pediatric Care Settings.

*Date:* March 12, 2015.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301–435–2598, [firrellj@csr.nih.gov](mailto:firrellj@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowship: Surgical Sciences, Biomedical Imaging and Bioengineering.

*Date:* March 13, 2015.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, 301–435–1170, [luow@csr.nih.gov](mailto:luow@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Bacterial Pathogenesis and Host Interactions.

*Date:* March 19, 2015.

*Time:* 11:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, [saadisoh@csr.nih.gov](mailto:saadisoh@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR–14–281: Connectomics Related to Human Disease.

*Date:* March 20, 2015.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Eugene Carstea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 408–9756, [carsteae@csr.nih.gov](mailto:carsteae@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–RM14–016: Model Organisms Screening Center for the Undiagnosed Diseases Network.

*Date:* March 23, 2015.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Joseph G. Rudolph, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–408–9098, [josephru@csr.nih.gov](mailto:josephru@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Dental, Oral and Craniofacial Sciences.

*Date:* March 25, 2015.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Yanming Bi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–451–0996, [ybi@csr.nih.gov](mailto:ybi@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member

Conflict: Mechanisms of Emotion, Stress and Health.

*Date:* March 25, 2015.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, [sechu@csr.nih.gov](mailto:sechu@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 18, 2015.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015–03629 Filed 2–23–15; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Complementary and Integrative Health Special Emphasis Panel, Center of Excellence for Natural Product Drug Interaction Research (U54).

*Date:* March 19–20, 2015.

*Time:* 8:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Peter Kozel, Ph.D., Scientific Review Officer, Nat Ctr for Complementary and Integrative Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892–5475, 301–496–8004, [kozelp@mail.nih.gov](mailto:kozelp@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: February 18, 2015.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-03632 Filed 2-23-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel, Review of R13/U13.

*Date:* March 12, 2015.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.12K, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Nina Sidorova, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.22, Bethesda, MD 20892, 301-594-3663, [sidorova@nigms.nih.gov](mailto:sidorova@nigms.nih.gov).

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel, NIGMS T32 Predoctoral Special Emphasis Panel.

*Date:* March 13, 2015.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.12P, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18, Bethesda, MD 20892, 301-594-3907, [pikbr@mail.nih.gov](mailto:pikbr@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 18, 2015.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-03639 Filed 2-23-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0008]

#### Agency Information Collection Activities: Biographic Information, Forms G-325, G-325A, G-325B, and G-325C; Extension, Without Change, of a Currently Approved Collection

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day Notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on December 17, 2014, at 79 FR 75172, allowing for a 60-day public comment period. USCIS did receive 1 comment in connection with the 60-day notice.

**DATES:** The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 26, 2015. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Comments may also be submitted via fax at (202) 395-5806. All submissions received must include the agency name and the OMB Control Number 1615-0008.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: <http://www.regulations.gov>. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529-2140, Telephone number 202-272-8377.

#### SUPPLEMENTARY INFORMATION:

##### Comments:

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: <https://egov.uscis.gov/cris/Dashboard.do>, or call the USCIS National Customer Service Center at 1-800-375-5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Biographic Information.

(3) *Agency form number, if any, and the applicable component of the DHS*

sponsoring the collection: G-325, G-325A, G-325B, and G-325C; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. These forms are used when it is necessary to check other agency records on applications or petitions submitted by applicants for certain benefits under the Immigration and Nationality Act (Act).

(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 collections G-325 is 11,006 and the estimated hour burden per response is .25 hours. The estimated total number of respondents for the information collections G-325A is 565,180 and the estimated hour burden per response is .25 hours. The estimated total number of respondents for the information collections G-325B is 744,942 and the estimated hour burden per response is .25 hours. The estimated total number of respondents for the information collections G-325C is 100,000 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 1,421,188 hours.

Dated: February 18, 2015.

**Laura Dawkins,**

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015-03675 Filed 2-23-15; 8:45 am]

**BILLING CODE 9111-97-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0038]

#### Agency Information Collection Activities: Petition To Remove the Conditions on Residence, Form Number I-751; Revision of a Currently Approved Collection

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 60-Day Notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this

proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until April 27, 2015.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615-0038 in the subject box, the agency name and Docket ID USCIS-2009-0008. 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](http://www.regulations.gov) under e-Docket ID number USCIS-2009-0008;

(2) *Email.* Submit comments to [USCISFRComment@uscis.dhs.gov](mailto: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.

**FOR FURTHER INFORMATION CONTACT:** If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at <http://www.regulations.gov>. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington DC 20529-2140, Telephone number 202-272-8377.

#### SUPPLEMENTARY INFORMATION:

##### Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that

is available via the link in the footer of <http://www.regulations.gov>.

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: <https://egov.uscis.gov/cris/Dashboard.do>, or call the USCIS National Customer Service Center at 1-800-375-5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of this Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition to Remove the Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-751; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form is used by USCIS to verify the petitioner's status and determine whether the conditional resident is eligible to have his or her status removed.

(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 I-751 is 140,513 and the estimated hour burden per response is 3.333 hours. The estimated total number of respondents for the biographic processing is 140,513 and the estimated hour burden per response is 1.17 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 797,130 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 \$16,644,320.

Dated: February 18, 2015.

**Laura Dawkins,**

Chief, Regulatory Coordination Division,  
Office of Policy and Strategy, U.S. Citizenship  
and Immigration Services, Department of  
Homeland Security.

[FR Doc. 2015-03674 Filed 2-23-15; 8:45 am]

BILLING CODE 9111-97-P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0091]

#### Agency Information Collection Activities: Application for Replacement Naturalization/Citizenship Document, Form N-565; Revision of a Currently Approved Collection

**AGENCY:** U.S. Citizenship and  
Immigration Services, Department of  
Homeland Security.

**ACTION:** 30-Day Notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on October 30, 2014, at 79 FR 64612, allowing for a 60-day public comment period. USCIS did receive 1 comment in connection with the 60-day notice.

**DATES:** The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 26, 2015. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Comments may also be submitted via fax at (202) 395-5806. All

submissions received must include the agency name and the OMB Control Number 1615-0091.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: <http://www.regulations.gov>. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529-2140, Telephone number 202-272-8377.

#### SUPPLEMENTARY INFORMATION:

##### Comments:

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: <https://egov.uscis.gov/cris/Dashboard.do>, or call the USCIS National Customer Service Center at 1-800-375-5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N-565; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form N-565 is used to apply for a replacement of a Declaration of Intention, Certificate of Citizenship or Replacement Certificate, or to apply for a special certificate of naturalization as a U.S. citizen to be recognized by a foreign country.

(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-565 is 29,298 and the estimated hour burden per response is .916 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 26,836 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 \$3,589,005.

Dated: February 18, 2015.

**Laura Dawkins,**

Chief, Regulatory Coordination Division,  
Office of Policy and Strategy, U.S. Citizenship  
and Immigration Services, Department of  
Homeland Security.

[FR Doc. 2015-03673 Filed 2-23-15; 8:45 am]

BILLING CODE 9111-97-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5831-N-11]

### 30-Day Notice of Proposed Information Collection: Section 3 Business Self- Certification Application

**AGENCY:** Office of the Chief Information  
Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** Comments Due Date: March 26, 2015.



**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at [ColettePollard@hud.gov](mailto:ColettePollard@hud.gov) or telephone 202-402-3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 22, 2014 at 79 FR 49790.

#### A. Overview of Information Collection

*Title of Information Collection:* Section 3 Business Self-Certification Application.

*OMB Approval Number:* 2529-0052.

*Type of Request:* Extension of currently approved collection.

*Form Number:* N/A.

*Description of the need for the information and proposed use:* The information collected from the Section 3 Business Registry Application allows HUD and recipients of covered HUD funding to identify Section 3 Businesses in local communities. The overriding purpose of this information collection is to increase the capacity of recipients of covered HUD assistance (*i.e.*, units of State and local government, Public Housing Authorities, and non-profits), and their developers and contractors, by making it easier to notify Section 3 businesses about local HUD-funded contracting opportunities in fulfillment of the regulatory requirements set forth at 24 CFR part 135. Information collected from the Section 3 Business Registry Application will be posted in a database of Section 3 Businesses which will be posted on HUD's Web page. Agencies that receive covered HUD funding will be encouraged to use the registry database to notify Section 3

Businesses about the availability of local contracting opportunities.

*Respondents:* Businesses that are either owned by, or substantially employ, low- or very low-income persons; developers; contractors; Public Housing Agencies; State and local governments; and the general public.

*Estimated Number of Respondents:* 2,100.

*Estimated Number of Responses:* 1.

*Frequency of Response:* 1.

*Average Hours per Response:* .33(20 minutes).

*Total Estimated Burdens:* 699.

#### B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Dated: February 12, 2015.

**Colette Pollard,**

*Department Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 2015-03593 Filed 2-23-15; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

[GX15EN05ESB0500]

#### Advisory Committee on Climate Change and Natural Resource Science

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Meeting Notice.

**SUMMARY:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 2, we

announce that the Advisory Committee on Climate Change and Natural Resource Science will hold a meeting via phone.

**DATES:** *Meeting via phone:* March 30, 2015 at 2 p.m. (Eastern Daylight Time).

**FOR FURTHER INFORMATION CONTACT:** Mr. Robin O'Malley, Designated Federal Officer, Policy and Partnership Coordinator, National Climate Change and Wildlife Science Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 400, Reston, VA 20192, [romalley@usgs.gov](mailto:romalley@usgs.gov), (703) 648-4086.

**SUPPLEMENTARY INFORMATION:** Chartered in May 2013, the Advisory Committee on Climate Change and Natural Resource Science (ACCCNRS) advises the Secretary of the Interior on the establishment and operations of the U.S. Geological Survey (USGS) National Climate Change and Wildlife Science Center (NCCWSC) and the Department of the Interior (DOI) Climate Science Centers (CSCs). ACCCNRS members represent federal agencies; state and local governments; American Indian tribes and other Native American entities; nongovernmental organizations; academic institutions; and the private sector. Duties of the committee include: (A) Advising on the contents of a national strategy identifying key science priorities to advance the management of natural resources in the face of climate change; (B) advising on the nature, extent, and quality of relations with and engagement of key partners at the regional/CSC level; (C) advising on the nature and effectiveness of mechanisms to ensure the identification of key priorities from management partners and to effectively deliver scientific results in useful forms; (D) advising on mechanisms that may be employed by the NCCWSC to ensure high standards of scientific quality and integrity in its products, and to review and evaluate the performance of individual CSCs, in advance of opportunities to re-establish expiring agreements; and (E) coordinating as appropriate with any Federal Advisory Committee established for the DOI Landscape Conservation Cooperatives. More information about the ACCCNRS is available at <https://nccwsc.usgs.gov/accnrs>.

*Meeting Agenda:* The objectives of the teleconference are to: (1) Resolve remaining substantive issues with the text of the Committee's report, (2) formally approve the final draft of the Committee's report, and if time allows, (3) discuss plans for the next ACCCNRS meeting. The final agenda will be posted on <https://nccwsc.usgs.gov/accnrs> prior to the meeting.

*Public Input:* All Committee meetings are open to the public. Interested members of the public should RSVP to Lisa Lacitiva by 1 week in advance via email, at [nccwsc@usgs.gov](mailto:nccwsc@usgs.gov), in order to receive phone line information and secure a line (space will be limited).

Written comments should be submitted, prior to, during, or after the meeting, to Mr. Robin O'Malley, Designated Federal Officer, by U.S. Mail to: Mr. Robin O'Malley, Designated Federal Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 400, Reston, VA 20192, or via email, at [romalley@usgs.gov](mailto:romalley@usgs.gov).

Persons with disabilities requiring special accommodations, such as closed captioning services, should contact Mr. O'Malley at (703) 648-4086 at least seven calendar days prior to the meeting. We will do our best to accommodate those who are unable to meet this deadline.

**Robin O'Malley,**  
*Designated Federal Officer.*

[FR Doc. 2015-03728 Filed 2-23-15; 8:45 am]

**BILLING CODE 4311-AM-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

[MMAA104000]

#### Central Gulf of Mexico Planning Area (CPA) Outer Continental Shelf (OCS) Oil and Gas Lease Sale 235 (CPA Sale 235); Correction

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.

**ACTION:** Notice; correction.

**SUMMARY:** On February 6, 2015, BOEM published in the *Federal Register* the Final Notice of Sale (FNOS) for CPA Sale 235 (80 FR 6758). The FNOS refers to documents entitled "List of Blocks Available for Leasing" and "Unleased Split Blocks." The referenced list and map were included in the FNOS Package, and the FNOS Package was made available at the BOEM address and Web site set forth in the FNOS. The list and map identifies blocks to be offered in CPA Sale 235; however, due to a clerical error, one block, South Marsh Island Area, North Addition, Block Number 242, was inadvertently omitted from the list and map.

**FOR FURTHER INFORMATION CONTACT:** Robert Samuels, Leasing Division Chief, [robert.samuels@boem.gov](mailto:robert.samuels@boem.gov).

**SUPPLEMENTARY INFORMATION:** In the *Federal Register* of February 6, 2015, in FR Doc. 2015-02273, on page 6759, the documents entitled "List of Blocks

Available for Leasing" and "Unleased Split Blocks" are referenced. These documents have been corrected to include the information below, which has been inserted between the entries "South Marsh Island Area, North Addition, Block Number 241." and "South Marsh Island Area, North Addition, Block Number 243."

L  
Y  
Map/Official Protraction Diagram (OPD)  
Name  
South Marsh Island Area, North Addition  
Map/OPD Number  
LA3D  
Block Number  
242  
A/P  
P  
Available Federal Acreage  
3,068.219971  
Minimum Bid Per Acre  
\$25.00  
Lease Term  
5  
Minimum Bid Per Block  
\$76,725  
Rent Per Acre  
\$7.00  
Bid System  
RS20  
Stipulation(s)  
8

The corrected "List of Blocks Available for Leasing" is available at the BOEM address and Web site set forth in the FNOS.

Dated: February 18, 2015.

**Abigail Ross Hopper,**  
*Director, Bureau of Ocean Energy Management.*

[FR Doc. 2015-03832 Filed 2-23-15; 8:45 am]

**BILLING CODE 4310-MR-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-522 and 731-TA-1258 (Final)]

#### Certain Passenger Vehicle and Light Truck Tires From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701-TA-522 and 731-TA-1258 (Final) under sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)

and 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China of certain passenger vehicle and light truck tires, provided for in subheadings 4011.10.10, 4011.10.50, 4011.20.10, and 4011.20.50. Tires meeting the scope description may also enter under subheadings 4011.99.45, 4011.99.85, 8708.70.45, and 8708.70.60.<sup>1</sup>

<sup>1</sup> For purposes of these investigations, the Department of Commerce has defined the subject merchandise as:

“. . . passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by this investigation may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

Prefix designations:

P—Identifies a tire intended primarily for service on passenger cars

LT—Identifies a tire intended primarily for service on light trucks

Suffix letter designations:

LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service.

All tires with a "P" or "LT" prefix, and all tires with an "LT" suffix in their sidewall markings are covered by this investigation regardless of their intended use.

In addition, all tires that lack a "P" or "LT" prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the *Tire and Rim Association Year Book*, as updated annually, unless the tire falls within one of the specific exclusions set out below.

Passenger vehicle and light truck tires, whether or not attached to wheels or rims, are included in the scope. However, if a subject tire is imported attached to a wheel or rim, only the tire is covered by the scope. Specifically excluded from the scope of this investigation are the following types of tires:

(1) Racing car tires; such tires do not bear the symbol "DOT" on the sidewall and may be marked with "ZR" in size designation;

(2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the *Tire and Rim Association Year Book*;

(3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;

(4) non-pneumatic tires, such as solid rubber tires;

(5) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in Table PCT-1B ("T" Type Spare Tires for

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**DATES:** *Effective:* Tuesday, January 27, 2015.

**FOR FURTHER INFORMATION CONTACT:** Justin Enck (202-205-3363), Office of

Temporary Use on Passenger Vehicles) of the *Tire and Rim Association Year Book*,

(b) the designation "T" is molded into the tire's sidewall as part of the size designation, and,

(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by *Tire and Rim Association Year Book*, and the rated speed is 81 MPH or a "M" rating;

(6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following physical characteristics (The Department of Commerce is currently suspending requirements (6)(d) and (e); therefore, tires entered, or withdrawn from warehouse for consumption that meet exclusion requirements (6)(a)-(c) are excluded from the scope of this investigation):

(a) the size designation molded on the tire's sidewall is listed in the ST sections of the *Tire and Rim Association Year Book*,

(b) the designation "ST" is molded into the tire's sidewall as part of the size designation,

(c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is "For Trailer Service Only" or "For Trailer Use Only",

(d) the load index molded on the tire's sidewall meets or exceeds those load indexes listed in the *Tire and Rim Association Year Book* for the relevant ST tire size, and

(e) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by TRA, and the speed does not exceed 81 MPH or an "M" rating;

(7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the *Tire and Rim Association Year Book*,

(b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is "Not For Highway Service" or "Not for Highway Use",

(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the *Tire and Rim Association Year Book*, and the rated speed does not exceed 55 MPH or a "G" rating, and

(d) the tire features a recognizable off-road tread design.

The products covered by the investigation are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.45.10, 4011.99.45.50, 4011.99.85.10, 4011.99.85.50, 8708.70.45.45, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive."

Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of certain passenger vehicle and light truck tires, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on June 3, 2014, by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (PA).

**Participation in the investigations and public service list.**—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.**—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI

gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff report.**—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on Tuesday, May 26, 2015, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

**Hearing.**—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Tuesday, June 9, 2015, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Wednesday, June 3, 2015. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on Thursday, June 4, 2015, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

**Written submissions.**—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform to the provisions of section 207.23 of the Commission's rules; the deadline for filing is Tuesday, June 2, 2015. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform to the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is Tuesday, June 16, 2015. In addition, any person who has not entered an appearance as

a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before Tuesday, June 16, 2015. On Wednesday, July 8, 2015, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before Friday, July 10, 2015, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing*, available on the Commission's Web site at <http://edis.usitc.gov>, elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Dated: February 18, 2015.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2015-03680 Filed 2-23-15; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-503]

### Earned Import Allowance Program: Evaluation of the Effectiveness of the Program for Certain Apparel From the Dominican Republic, Sixth Annual Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of opportunity to provide written comments in connection with the Commission's sixth annual review.

**SUMMARY:** The U.S. International Trade Commission (Commission) has announced its schedule, including deadlines for filing written submissions, in connection with the preparation of its sixth annual review in investigation No. 332-503, *Earned Import Allowance Program: Evaluation of the Effectiveness of the Program for Certain Apparel from the Dominican Republic, Sixth Annual Review*.

**DATES:**

*April 10, 2015:* Deadline for filing written submissions.

*July 24, 2015:* Transmittal of sixth report to House Committee on Ways and Means and Senate Committee on Finance.

**ADDRESSES:** All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions, including statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Project Leader Laura Rodriguez (202-205-3499 or [laura.rodriguez@usitc.gov](mailto:laura.rodriguez@usitc.gov)) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202-205-3091 or [william.gearhart@usitc.gov](mailto:william.gearhart@usitc.gov)). The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819 or [margaret.olaughlin@usitc.gov](mailto:margaret.olaughlin@usitc.gov)). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its Web site (<http://www.usitc.gov>). 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.

**SUPPLEMENTARY INFORMATION:**

*Background:* Section 404 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (DR-CAFTA Act) (19 U.S.C. 4112) required the Secretary of Commerce to establish an Earned Import Allowance Program (EIAP) and directed the Commission to conduct annual reviews of the program to evaluate its effectiveness and make recommendations for improvements. Section 404 of the DR-CAFTA Act authorizes certain apparel articles wholly assembled in an eligible country to enter the United States free of duty if accompanied by a certificate that shows evidence of the purchase of certain U.S. fabric. The term "eligible country" is defined to mean the Dominican Republic. More specifically, the program allows producers (in the Dominican Republic) that purchase a certain quantity of qualifying U.S. fabric to produce certain cotton bottoms in the Dominican Republic to receive a credit that can be used to ship a certain quantity of eligible apparel using third-country fabrics from the Dominican Republic to the United States free of duty.

Section 404(d) directs the Commission to conduct an annual review of the program to evaluate the effectiveness of the program and make recommendations for improvements. The Commission is required to submit its reports containing the results of its reviews to the House Committee on Ways and Means and the Senate Committee on Finance. Copies of the Commission's first five annual reviews are available on the Commission's Web site at [www.usitc.gov](http://www.usitc.gov), including the fifth annual review, which was published on July 25, 2014 (ITC Publication 4476). The Commission expects to submit its report on its sixth annual review by July 24, 2015.

The Commission instituted this investigation pursuant to section 332(g) of the Tariff Act of 1930 to facilitate docketing of submissions and also to facilitate public access to Commission records through the Commission's EDIS electronic records system.

*Written Submissions:* Interested parties are invited to file written submissions concerning this sixth annual review. All written submissions should be addressed to the Secretary, and all such submissions should be received no later than 5:15 p.m., April 10, 2015. All written submissions must

conform to the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. If confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission intends to publish only a public report in this review. Consequently, the report that the Commission sends to the committees will not contain any confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing its report will not be published in a manner that would reveal the operations of the firm supplying the information.

**Summaries of Written Submissions:** The Commission intends to publish summaries of the positions of interested persons in an appendix to its report. Persons wishing to have a summary of their position included in the appendix should include a summary with their written submission. The summary may not exceed 500 words, should be in MSWord format or a format that can be easily converted to MSWord, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. In the appendix the Commission will identify the name of the organization furnishing the summary, and will

include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: February 19, 2015.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2015–03752 Filed 2–23–15; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–432 and 731–TA–1024–1028 (Second Review) and AA1921–188 (Fourth Review)]**

### **Prestressed Concrete Steel Wire Strand From Brazil, India, Japan, Korea, Mexico and Thailand; Scheduling of Expedited Five-Year Reviews**

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on prestressed concrete steel wire strand from Brazil, India, Korea, Mexico, and Thailand, and the antidumping finding on prestressed concrete steel wire strand from Japan, as well as revocation of the countervailing duty order on prestressed concrete steel wire strand from India, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** *Effective Date:* February 6, 2015.

**FOR FURTHER INFORMATION CONTACT:** Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the

Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

#### **SUPPLEMENTARY INFORMATION:**

**Background.** On Friday, February 6, 2015, the Commission determined that for each review, the domestic interested party group response to its notice of institution (79 FR 65246, November 3, 2014) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.<sup>1</sup> Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

**Staff report.** A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on Thursday, March 5, 2015, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

**Written submissions.** As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,<sup>2</sup> and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before Tuesday, March 10, 2015 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by Tuesday, March 10, 2015. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If

<sup>1</sup> A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

<sup>2</sup> The Commission has found the responses submitted by Insteel Wire Products Company and Sumiden Wire Products Corp. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on July 25, 2014. See 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at <http://edis.usitc.gov>.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Determination.** The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: February 18, 2015.

By order of the Commission.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2015-03679 Filed 2-23-15; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-936]

### Certain Footwear Products; Notice of a Commission Determination Not to Review Granting New Balance Athletic Shoe, Inc.'s Motion To Intervene as a Respondent

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 36) of the presiding administrative law judge ("ALJ") granting New Balance Athletic Shoe, Inc.'s ("New Balance") motion to intervene as a respondent in the investigation.

### FOR FURTHER INFORMATION CONTACT:

Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on November 17, 2014, based on a complaint filed on behalf of Converse Inc. ("Converse") of North Andover, Massachusetts. 79 FR 68482. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain U.S. Trademark Registration Nos.: 4,398,753; 3,258,103; and 1,588,960. The complaint further alleges violations of section 337 based upon unfair competition/false designation of origin, common law trademark infringement and unfair competition, and trademark dilution, the threat or effect of which is to destroy or substantially injure an industry in the United States. The Commission's notice of investigation named several respondents.

On January 12, 2015, non-party New Balance of Boston, Massachusetts moved to intervene as a respondent in the investigation. The Commission investigative attorney filed a response in support of the motion, and Converse filed a response indicating that it did not oppose the motion and affirmed that intervention would not delay or prejudice adjudication of the original parties' rights. Other parties did not oppose the motion.

On January 27, 2015, the ALJ issued the subject ID (Order No. 36) granting New Balance's motion to intervene as a respondent in the investigation. No party petitioned for review of the ID.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section

337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

Issued: February 18, 2015.

By order of the Commission.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2015-03693 Filed 2-23-15; 8:45 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 Criminal Procedure.

**ACTION:** Revised Notice of Open Meeting.

**SUMMARY:** The March 16-17, 2015 meeting of the Advisory Committee on Rules of Criminal Procedure previously scheduled at the Florida A&M University College of Law, will now be held at the United States Courthouse, 401 West Central Boulevard, Orlando, Florida 32801. The announcement for this meeting was previously published in 80FR 4592.

### FOR FURTHER INFORMATION CONTACT:

Rules Committee Support Office, Administrative Office of the United States Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE., Suite 7-240, Washington, DC 20544, Telephone (202) 502-1820.

Dated: February 19, 2015.

**Julie Wilson,**

*Attorney Advisor, Rules Committee Support Office.*

[FR Doc. 2015-03724 Filed 2-23-15; 8:45 am]

**BILLING CODE 2210-55-P**

**DEPARTMENT OF JUSTICE**

[OMB Number 1121-0152]

**Agency Information Collection Activities; Proposed eCollection eComments Requested; Proposed Collection: Reinstatement With Changes of Previously Approved Collection for Which Approval Has Expired; Survey: Survey of Prison Inmates (Formerly Named the Survey of Inmates in State and Federal Correctional Facilities)****AGENCY:** Bureau of Justice Statistics, Department of Justice.**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until April 27, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Glaze, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: [Lauren.Glaze@usdoj.gov](mailto:Lauren.Glaze@usdoj.gov); telephone: 202-305-9628).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, 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;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic,

mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The Title of the Form/Collection:* Survey of Prison Inmates, 2015–2016 (formerly named the Survey of Inmates in State and Federal Facilities).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number for the questionnaire is NPS–25. The applicable component within the Department of Justice is the Bureau of Justice Statistics (Corrections Unit), in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Others: State government and Federal government. Affected public are prison inmates age 15 or older held in adult state or federal correctional facilities and the adult state and federal correctional facilities. The purposes of this omnibus survey are to generate reliable, nationally-representative estimates of the characteristics of prisoners in the United States, track changes in the characteristics of prisoners over time, conduct studies of prisoners on special topics, and identify policy-relevant changes in the prison population. The survey will also be used to produce subnational estimates of prisoners within jurisdictions that have the largest prison populations (*i.e.* 100,000 or more) in the nation. The 2015–2016 SPI survey builds upon prior surveys and is organized around the concepts of harm, risk, and reentry. Specifically, the harms that prisoners have perpetrated on society as measured by the severity of the offense, the incident characteristics of the offense and criminal history; the risk they pose for recidivism as measured by harm elements and additional risk factors such as ties to the community and mainstream institutions of social integration, such as pre-prison employment within the labor market; their challenges and expectations for reentry back into the community as measured by the SPI through the extent of substance abuse, mental health, and medical problems of prisoners, treatment they may have received for problems, programs in which they participated while in prison, and their motivation (*i.e.*, intrinsic or extrinsic) to

participate in programs. The data will be collected through face-to-face interviews with the inmates using Computer-Assisted Personal Interviewing (CAPI) technology. BJS has used the data from previous iterations of SPI to publish a variety of statistical products that profile prisoner characteristics over time and address important substantive and policy-relevant issues related to crime and corrections. The data are also used by a variety of stakeholders for these same purposes, including the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics. No other collection series provides these data on the variety of topics that SPI covers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The 2015–2016 SPI consists of a pretest and a national study. The pretest will include 2 state correctional facilities providing a roster of inmates at 0.5 hours per facility for a total of 1 hour; prison staff escorting 60 inmates to/from interview sites at 0.5 hours per inmate for a total of 30 hours; and 60 inmates responding to the questionnaire at 1.00 hour per interview for a total of 60 hours. The pretest will result in a total expected burden of approximately 91 hours. For the SPI national study, a maximum of 416 state and federal correctional facilities will provide a roster of inmates at 0.5 hours per facility for a total of 208 hours; prison staff will escort a maximum of 33,200 inmates to/from interview sites at 0.5 hours per inmate for a total of 16,600 hours; and a maximum of 33,200 inmates will respond to the questionnaire at 1.00 hours per interview for a total of 33,200 hours. The SPI national study will result in an expected maximum burden of approximately 50,008 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden is 50,099 annual hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: February 19, 2015.

**Jerri Murray,**  
Department Clearance Officer for PRA, U.S.  
Department of Justice.

[FR Doc. 2015-03708 Filed 2-23-15; 8:45 am]

**BILLING CODE 4410-18-P**

**DEPARTMENT OF JUSTICE**

[OMB Number 1140-0072]

**Agency Information Collection Activities; Proposed eCollection eComments Requested; Employee Possessor Questionnaire**

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** Volume 79, Number 242, page 75178 on December 17, 2014, allowing for a 60 day comment period.

**DATES:** The purpose of this notice is to allow for an additional 30 days for public comment until March 26, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christopher Reeves, Chief, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25405. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or send email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection 1140-0072**

(1) *Type of Information Collection:* Extension without change of an existing collection.

(2) *Title of the Form/Collection:* Employee Possessor Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 5400.28.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individual or households.

Other: Business or other for-profit.

Abstract: Each employee possessor in the explosives business or operations required to ship, transport, receive, or possess (actual or constructive), explosive materials must submit this form. The form will be submitted to ATF to determine whether the person who provided the information is qualified to be an employee possessor in an explosive business.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,000 respondents will take 20 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 3,334 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: February 19, 2015.

**Jerri Murray,**  
*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2015-03707 Filed 2-23-15; 8:45 am]

**BILLING CODE 4410-FY-P**

**DEPARTMENT OF JUSTICE**

[OMB Number 1103-NEW]

**Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; Perceptions of Safety and Police-Community Relations**

**AGENCY:** Community Oriented Policing Services (COPS) Office, Department of Justice.

**ACTION:** 60-day notice.

**SUMMARY:** The Department of Justice (DOJ), Community Oriented Policing Services (COPS) Office, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until April 27, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kimberly J. Brummett, Program Specialist, Department of Justice, Community Oriented Policing Services (COPS) Office, 145 N Street NE., Washington, DC 20530 (202-353-9769).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, 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;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.



## Overview of This Information Collection

1. *Type of Information Collection:* New Collection; Perceptions of Safety and Police-Community Relations.

a. *The Title of the Form/Collection:* Survey of Resident Perceptions of Safety and Policing & Survey of Officer Perceptions of Policing and Department/Organization.

2. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice, Community Oriented Policing Services (COPS) Office.

3. *Affected public who will be asked or required to respond, as well as a brief abstract:*

The affected public who will be asked to respond to the surveys include:

- Community residents of the CRI-TA site over the age of 18;
- Sworn and non-sworn police officers; and

The information collected through the two respective surveys is to establish a baseline to measure the impact of technical assistance given to Collaborative Reform Initiative (CRI) sites to advance community police and improve community confidence in the police. The four technical assistance providers (The Police Foundation, the Center for Naval Analyses (CNA), Institute of Intergovernmental Research (IIR), and Hillard Heintze) or one or more survey administration organizations will utilize each of the two surveys at one point in time for two different populations. The surveys will be administered prior to the application of technical assistance (or shortly thereafter) to establish a baseline of public and police perception of safety, community policing, and police-community relations. The data collected will cover one point in time in 2015 to establish this baseline. The survey results will not be used to draw conclusions that can be applied to the entire nation, but rather only for sites COPS chooses to provide technical assistance, so a nationally representative sample is not recommended. However, the surveys can be used in any municipality or region in the United States. To enhance site sustainability, the surveys will serve as tools for CRI sites (and future COPS community policing sites) to monitor their own change efforts and progress over time. Sites will be encouraged to administer the same survey tools at varying time intervals in order to compare pre- and post-technical assistance perceptions. The sites can infer the impact of technical assistance as well as their own

capacity to sustain change. The community resident survey should over-represent those who have or likely have had contact with the police in that locality, determined by arrest rates by zip code or neighborhood delineation, race, and ethnicity. The police survey will be disseminated to all sworn and non-sworn officers. The detainee survey shall be comprised of a convenience sample of those who have had recent contact with the police in that locality.

4. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated one to five percent of members of each community will take part in the Survey of Resident Perceptions of Safety and Policing. The COPS Office estimates 50 sites over the approval period of this collection. Based on previous use of the survey at the Program in Criminal Justice Policy and Management at the John F. Kennedy School of Government at Harvard University (PCJ), the estimated range of completion for respondents is expected to be between 10 minutes to 15 minutes for completion. An estimated 15% of police officers of each agency will take part in the Survey of Officer Perceptions of Policing and Department/Organization. The COPS Office estimates 50 sites over the approval period of this collection. Based on previous use of the survey by the PCJ, the estimated range of completion for respondents is expected to be between 15 minutes and 20 minutes. Of the detainees offered the opportunity to participate, an estimated 20–25% of detainees will agree to participate in the Survey of Detainee Perceptions of Policing. Based on previous use of the survey the PCJ, the estimated range of completion for detainee respondents is expected to be between five minutes and 10 minutes.

5. *An estimate of the total public burden (in hours) associated with the collection:* Surveys will be disseminated to respective CRI sites pre-technical assistance to gather baseline data. For the approval timeframe of this collection, the COPS Office estimates that it will administer the survey to 50 community and agency sites:

The COPS Office estimates that it will administer 400 community member and 100 officer surveys per site:

- 400 surveys × 50 sites (20,000 surveys) × 20 minutes = 6,667 hours.
- 100 surveys × 50 sites (5,000 surveys) × 20 minutes = 1,667 hours.

The total estimated burden associated with this collection is 8,334 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States

Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: February 19, 2015.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2015–03702 Filed 2–23–15; 8:45 am]

**BILLING CODE 4410-AT-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1140–0046]

### Agency Information Collection Activities: Proposed eCollection eComments Requested; Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** Volume 79, Number 242, page 75178 on December 17, 2014, allowing for a 60 day comment period.

**DATES:** The purpose of this notice is to allow for an additional 30 days for public comment until March 26, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact [fipb-informationcollection@atf.gov](mailto:fipb-informationcollection@atf.gov). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or send email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection 1140-0046

(1) *Type of Information Collection:* Extension without change of an existing collection.

(2) *Title of the Form/Collection:* Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: None.

*Component:* Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local, or Tribal Government.

Other: None.

Abstract: The letter is used by a law enforcement officer to purchase handguns to be used in his/her official duties from a licensed firearm dealer anywhere in the country. The letter shall state that the officer will use the firearm in official duties and that a records check reveals that the purchasing officer has no convictions for misdemeanor crimes of domestic violence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 50,000 respondents will take 8 minutes to complete and file the letter.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 6,667 hours.

*If additional information is required contact:* Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: February 19, 2015.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2015-03706 Filed 2-23-15; 8:45 am]

**BILLING CODE 4410-CW-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1110-0045]

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension with Change, of a Previously Approved Collection; FD-1000 Customer Satisfaction Assessment

**AGENCY:** Bureau of Investigation, Department of Justice.

**ACTION:** 30-day Notice.

**SUMMARY:** The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** Volume 79, Number 236, Pages 73102-73103, on December 9, 2014.

**DATES:** Comments are encouraged and will be accepted for an additional 30 days until March 26, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Robin Ruth, FBI Laboratory, Federal Bureau of Investigation, 2501 Investigation Parkway, Quantico, VA 22135. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to [OIRA\\_submissions@omb.eop.gov](mailto:OIRA_submissions@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information

are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the 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/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* FBI Laboratory Customer Satisfaction Assessment

3. *The agency form number:* FD-1000.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

This information collection is an assessment of the FBI Laboratory services by law enforcement agencies (federal, state, and local) that submit evidence for examination. The information collected is used by FBI Laboratory management to evaluate the quality of the forensic services provided to law enforcement. Additionally, the FBI Laboratory is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) under the ASCLD/LAB-*International* Accreditation Program. A requirement for maintaining accreditation is for the FBI Laboratory to seek feedback, both positive and negative, from its customers. This feedback is evaluated to improve the services of the FBI Laboratory. The information gathered in the FD-1000 will meet this requirement.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 3000 respondents will complete the assessment with an estimated range of burden for respondents to be 5 minutes for completion.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 250 hours. It is estimated that respondents will take 5 minutes to complete the assessment. The burden hours for collecting respondent data sum to 250 hours (3000 respondents × 5 minutes = 250 hours). If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: February 19, 2015.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2015-03705 Filed 2-23-15; 8:45 am]

**BILLING CODE 4410-02-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1110-NEW]

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Approval of a New Collection; Rap Back Services Form (1-796)

**AGENCY:** Federal Bureau of Investigation, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until April 27, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Marissa N. Barron, Management and Program Analyst, FBI, CJIS, Biometric Services Section, Customer Support Unit, Module E-1, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306 (facsimile: 304-625-5392).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information

are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the 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;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

### Overview of This Information Collection

(1) *Type of Information Collection:* Approval of a new collection.

(2) *Title of the Form/Collection:* Rap Back Services Form.

(3) *Agency form number:* 1-796.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: This form is utilized by authorized agencies to enroll individuals in the Rap Back Service to ensure the submitting agency is notified when individuals in positions of trust engage in criminal conduct or individuals under the supervision of a criminal justice agency commit subsequent criminal acts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 120,000 respondents will complete each form within approximately 5 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 500 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E-405B, Washington, DC 20530.

Dated: February 19, 2015.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2015-03704 Filed 2-23-15; 8:45 am]

**BILLING CODE 4410-02-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

On February 4, 2015, the Chapter 7 Trustee lodged a proposed Settlement Agreement with the United States Bankruptcy Court for the Southern District of Florida, in the Chapter 7 bankruptcy entitled *In re: Merendon Mining (Nevada), Inc. a/k/a/Milowe Brost Company*, Case No. 09-11958-BKC-AJC.

The Settlement Agreement resolves the claims of the United States set forth in the Proof of Claim against Merendon Mining (Nevada), Inc., for costs incurred and to be incurred in connection with the Central City/Clear Creek Superfund Site, located in Clear Creek County and Gilpin County, Colorado (the "Site"), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607. Under the Settlement Agreement, the Chapter 7 Trustee agrees to an allowed claim of \$65,043.00 for past costs incurred by the United States Environmental Protection Agency at the Site.

The publication of this notice opens a period for public comment on the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re: Merendon Mining (Nevada), Inc. a/k/a/Milowe Brost Company*, DJ No. 90-11-3-10182. All comments must be submitted no later than twenty-one (21) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By e-mail .....	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail .....	Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, D.C. 20044-7611.

During the public comment period, the Settlement Agreement may be

examined and downloaded at this Justice Department Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). We will provide a paper copy of the Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Settlement Agreement Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$3.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the appendices and signature pages, the cost is \$2.25.

**Robert Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2015–03676 Filed 2–23–15; 8:45 am]

**BILLING CODE 4410–15–P**

**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

**Meetings of Humanities Panel**

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** The National Endowment for the Humanities will hold seventeen meetings of the Humanities Panel, a federal advisory committee, during March, 2015. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for meeting dates.

**ADDRESSES:** The meetings will be held at Constitution Center at 400 7th Street SW., Washington, DC 20506. See

**SUPPLEMENTARY INFORMATION** for meeting room numbers.

**FOR FURTHER INFORMATION CONTACT:**

Lisette Voyatzis, Committee Management Officer, 400 7th Street SW., Room, 4060, Washington, DC 20506; (202) 606–8322; [evoyatzis@neh.gov](mailto:evoyatzis@neh.gov). Hearing-impaired individuals who prefer to contact us by phone may use NEH's TDD terminal at (202) 606–8282.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. DATE: March 10, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: P003.

This meeting will discuss applications on the subjects of Anglophone and Latin American Literature for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

2. DATE: March 11, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: P003.

This meeting will discuss applications on the subject of American History for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

3. DATE: March 12, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: P003.

This meeting will discuss applications on the subject of New World Archeology for the Collaborative Research grant program, submitted to the Division of Research Programs.

4. DATE: March 17, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: P003.

This meeting will discuss applications on the subjects of World History and Literature for the Collaborative Research grant program, submitted to the Division of Research Programs.

5. DATE: March 18, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: P003.

This meeting will discuss applications on the subjects of Old World Archeology and Classics for the Collaborative Research grant program, submitted to the Division of Research Programs.

6. DATE: March 19, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: P003.

This meeting will discuss applications on the subject of World History for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

7. DATE: March 23, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: 4002.

This meeting will discuss applications on the subject of History for Media Projects: Production Grants, submitted to the Division of Public Programs.

8. DATE: March 24, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: 4002.

This meeting will discuss applications on the subject of Art for Museums, Libraries, and Cultural Organizations: Implementation Grants, submitted to the Division of Public Programs.

9. DATE: March 24, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: P003.

This meeting will discuss applications for the Sustaining Cultural

Heritage Collections grant program, submitted to the Division of Preservation and Access.

10. DATE: March 24, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: P002.

This meeting will discuss applications on the subject of American Studies for the Collaborative Research grant program, submitted to the Division of Research Programs.

11. DATE: March 25, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: P003.

This meeting will discuss applications on the subjects of Philosophy and Religion for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

12. DATE: March 26, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: P002.

This meeting will discuss applications for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

13. DATE: March 26, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: P003.

This meeting will discuss applications on the subject of Arts for the Collaborative grant program, submitted to the Division of Research Programs.

14. DATE: March 26, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: 4002.

This meeting will discuss applications on the subject of History for Media Projects: Production Grants, submitted to the Division of Public Programs.

15. DATE: March 30, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: 4002.

This meeting will discuss applications on the subject of History for Museums, Libraries, and Cultural Organizations: Implementation Grants, submitted to the Division of Public Programs.

16. DATE: March 31, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: P002.

This meeting will discuss applications for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

17. DATE: March 31, 2015.  
TIME: 8:30 a.m. to 5:00 p.m.  
ROOM: P003.

This meeting will discuss applications on the subjects of Philosophy, Religion, and History of Science for the Collaborative Research grant program, submitted to the Division of Research Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: February 19, 2015.

**Lisette Voyatzis,**

*Committee Management Officer.*

[FR Doc. 2015-03761 Filed 2-23-15; 8:45 am]

**BILLING CODE 7536-01-P**

## NEIGHBORHOOD REINVESTMENT CORPORATION

### Audit Committee Sunshine Act Meeting

**TIME AND DATE:** 2 p.m., Tuesday, March 3, 2015.

**PLACE:** NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE., Washington DC 20002.

**STATUS:** Open (with the exception of Executive Sessions).

**CONTACT PERSON:** Jeffrey Bryson, General Counsel/Secretary (202) 760-4101; [jbryson@nw.org](mailto:jbryson@nw.org).

**AGENDA:**

- I. Call To Order
- II. Presentation with the External Auditor
- III. Executive Session with the External Auditor
- IV. Executive Session with the Chief Audit Executive
- V. Executive Session: Pending Litigation
- VI. Internal Audit Reports with Management's Response
- VII. Internal Audit Status Reports
- VIII. Compliance Updates
- IX. OHTS Watch List Review
- X. Other External Audit Reports
- XI. Adjournment

**Jeffrey T. Bryson,**

*EVP & General Counsel/Corporate Secretary.*

[FR Doc. 2015-03876 Filed 2-20-15; 4:15 pm]

**BILLING CODE 7570-02-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2015-0035]

### Natural Phenomena Hazards in Fuel Cycle Facilities

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft interim staff guidance; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft Interim Staff Guidance (ISG) for Natural Phenomena Hazards (NPH) in Fuel Cycle Facilities. Fuel cycle facility licensees are required to conduct and maintain an Integrated Safety Analysis (ISA). This analysis must examine potential accident sequences caused by process deviations or other events internal to the facility and credible external events, including natural phenomena. During inspections of selected fuel cycle facilities to confirm that the facilities were in compliance with regulatory requirements to address natural phenomena hazards, the NRC staff identified several unresolved items (URIs). The ISG provides criteria and methods that the staff can use to review the treatment of NPH at fuel cycle facilities as evaluated in the facility ISA.

**DATES:** Submit comments by April 10, 2015. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received 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-2015-0035. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto: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: OWFN-12H08, 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](mailto:Jonathan.Marcano@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### A. Obtaining Information

Please refer to Docket ID NRC-2015-0035 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-2015-0035.

- 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](mailto:pdr.resource@nrc.gov). The draft ISG for Natural Phenomena Hazards in Fuel Cycle Facilities is available in ADAMS under Accession No. ML15026A136.

- 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-2015-0035 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at <http://www.regulations.gov> as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

## II. Background

As a result of the lessons learned from the accident at the Fukushima Daichi Nuclear Power Plant, the U.S. Nuclear Regulatory Commission staff performed a systematic evaluation and inspection of selected fuel cycle facilities to (1) confirm that licensees are in compliance with regulatory requirements and facility-specific license conditions; and (2) to evaluate their readiness to address NPH events and other licensing basis events related to NPH. From December 2011 through May 2012, the staff conducted these inspections in accordance with NRC Temporary Instruction (TI) 2600/015, "Evaluation of Licensee Strategies for the Prevention and/or Mitigation of Emergencies at Fuel Facilities."

As a result of the TI inspection activities, the staff identified URIs related to Part 70 requirements and the current licensing basis of these facilities. The URIs document the need to further evaluate whether licensees are in compliance with regulatory requirements regarding accident sequences resulting from NPH. The staff is issuing this ISG to provide additional guidance for addressing accident sequences that may result from NPH. This ISG will be incorporated into future revisions of Appendix D of Chapter 3 of NUREG 1520, "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility" (ADAMS Accession No. ML020930033).

Dated at Rockville, Maryland, this 13th day of February, 2015.

For the Nuclear Regulatory Commission.

**Craig Erlanger,**

*Deputy Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2015-03764 Filed 2-23-15; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-387 and 50-388; NRC-2012-0283]

### PPL Susquehanna, LLC; Susquehanna Steam Electric Station, Units 1 and 2

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; withdrawal by applicant.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has granted the request of PPL Susquehanna, LLC to withdraw its application dated September 18, 2012, as supplemented

by letter dated May 10, 2013, for a proposed amendment to Renewed Facility Operating License Nos. NPF-14 and NPF-22 for the Susquehanna Steam Electric Station, Units 1 and 2. The proposed amendment would have changed Technical Specification (TS) Surveillance Requirements 3.8.1.9, 3.8.1.11, 3.8.1.12, and 3.8.1.19 in TS 3.8.1, "AC Sources—Operating." Specifically, the proposed amendments would increase the diesel generator (DG) acceptable minimum steady state voltage when operating in emergency/ isochronous mode.

**DATES:** Notice of withdrawal of license amendment application given on February 24, 2015.

**ADDRESSES:** Please refer to Docket ID NRC-2012-0283 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-2012-0283. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto: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:** Jeffrey A. Whited, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-4090, email: [jeffrey.whited@nrc.gov](mailto:jeffrey.whited@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The NRC has granted the request of PPL Susquehanna, LLC (the licensee) to

withdraw its application dated September 18, 2012 (ADAMS Accession No. ML12262A322), as supplemented by letter dated May 10, 2013 (ADAMS Accession No. ML13130A130), for a proposed amendment to the Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendment would have changed TS Surveillance Requirements 3.8.1.9, 3.8.1.11, 3.8.1.12, and 3.8.1.19 in TS 3.8.1, "AC Sources—Operating." Specifically, the proposed amendments would increase the DG acceptable minimum steady state voltage when operating in emergency/ isochronous mode.

The NRC published a Biweekly Notice in the **Federal Register** on November 27, 2012 (77 FR 70842), that gave notice that this proposed amendment was under consideration by the NRC. However, by letter dated December 22, 2014 (ADAMS Accession No. ML15022A013), the licensee requested to withdraw the proposed amendment.

Dated at Rockville, Maryland, this 9th day of February 2015.

For the Nuclear Regulatory Commission.

**Jeffrey A. Whited,**

*Project Manager, Plant Licensing Branch I-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2015-03773 Filed 2-23-15; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-334; NRC-2014-0180]

### FirstEnergy Nuclear Operating Company; Beaver Valley Power Station, Unit 1

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; withdrawal by applicant.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has granted the request of FirstEnergy Nuclear Operating Company to withdraw its application dated July 30, 2013, for a proposed amendment to Renewed Facility Operating License No. DPR-66, for the Beaver Valley Power Station, Unit 1. The proposed amendment would authorize the implementation of § 50.61a of Title 10 of the *Code of Federal Regulations* (10 CFR), "Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events," in lieu of the requirements located in 10 CFR 50.61, "Fracture Toughness

Requirements for Protection Against Pressurized Thermal Shock Events.”

**DATES:** Notice of withdrawal of license amendment application given on February 24, 2015.

**ADDRESSES:** Please refer to Docket ID NRC–2014–0180 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–2014–0180. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- NRC’s Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto: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:**

Taylor A. Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7128, email: [Taylor.Lamb@nrc.gov](mailto:Taylor.Lamb@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

The NRC has granted the request of FirstEnergy Nuclear Operating Company (the licensee) to withdraw its application dated July 30, 2013 (ADAMS Accession No. ML13212A027), for a proposed amendment to the Beaver Valley Power Station, Unit 1, located in Beaver County, Pennsylvania.

The proposed amendment would authorize the implementation of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.61a, “Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events,” in lieu of the requirements

located in 10 CFR 50.61, “Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events.”

The NRC published a Biweekly Notice in the **Federal Register** on August 5, 2014 (79 FR 45476), that gave notice that this proposed amendment was under consideration by the NRC. However, by letter dated February 5, 2015 (ADAMS Accession No. ML15036A424), the licensee requested to withdraw the proposed amendment.

Dated at Rockville, Maryland, this 18th day of February 2015.

For the Nuclear Regulatory Commission.

**Taylor A. Lamb,**

*Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2015–03758 Filed 2–23–15; 8:45 am]

**BILLING CODE 7590–01–P**

**NUCLEAR REGULATORY COMMISSION**

**[Docket Nos. 50–387 and 50–388; NRC–2012–0283]**

**PPL Susquehanna, LLC; Susquehanna Steam Electric Station, Units 1 and 2**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; withdrawal by applicant.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has granted the request of PPL Susquehanna, LLC to withdraw its application dated September 18, 2012, as supplemented by letter dated May 10, 2013, for a proposed amendment to Renewed Facility Operating License Nos. NPF–14 and NPF–22, for the Susquehanna Steam Electric Station, Units 1 and 2. The proposed amendment would have made changes to Technical Specification (TS) Surveillance Requirement (SR) 3.8.1.19 in TS 3.8.1 “AC Source—Operating.” Specifically, the proposed amendment would increase the minimum steady state frequency for Diesel Generator E during the loss of offsite power and emergency core cooling system surveillance.

**DATES:** Notice of withdrawal of license amendment application given on February 24, 2015.

**ADDRESSES:** Please refer to Docket ID NRC–2012–0283 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–2012–0283. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- NRC’s Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto: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:**

Jeffrey A. Whited, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–4090, email: [jeffrey.whited@nrc.gov](mailto:jeffrey.whited@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

The NRC has granted the request of PPL Susquehanna, LLC (the licensee) to withdraw its application dated September 18, 2012 (ADAMS Accession No. ML12262A321), as supplemented by letter dated May 10, 2013 (ADAMS Accession No. ML13130A127), for a proposed amendment to the Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendment would have made changes to TS SR 3.8.1.19 in TS 3.8.1 “AC Source—Operating.” Specifically, the proposed amendment would increase the minimum steady state frequency for Diesel Generator E during the loss of offsite power and emergency core cooling system surveillance.

The NRC published a Biweekly Notice in the **Federal Register** on November 27, 2012 (77 FR 70843), that gave notice that this proposed amendment was under consideration by the NRC. However, by letter dated December 22, 2014 (ADAMS Accession No. ML15022A013), the licensee requested to withdraw the proposed amendment.

Dated at Rockville, Maryland, this 9th day of February 2015.

For the Nuclear Regulatory Commission.

**Jeffrey A. Whited,**

*Project Manager, Plant Licensing Branch I-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2015-03766 Filed 2-23-15; 8:45 am]

**BILLING CODE 7590-01-P**

## OFFICE OF PERSONNEL MANAGEMENT

### Hispanic Council on Federal Employment

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** March 3, 2015 Council Meeting.

**SUMMARY:** The Hispanic Council on Federal Employment (Council) meeting will be held on Tuesday, March 3, 2014 at the location shown below at the following time: 2:00 to 4:00 p.m.

The Council is an advisory committee composed of representatives from Hispanic organizations and senior government officials. Along with its other responsibilities, the Council shall advise the Director of the Office of Personnel Management on matters involving the recruitment, hiring, and advancement of Hispanics in the Federal workforce. The Council is co-chaired by the Director of the Office of Personnel Management and the Chair of the National Hispanic Leadership Agenda (NHLEA).

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at any of the meetings. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

*Location:* U.S. Office of Personnel Management, 1900 E St. NW., Executive Conference Room, 5th Floor, Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Veronica E. Villalobos, Director for the Office of Diversity and Inclusion, Office of Personnel Management, 1900 E St. NW., Suite 5H35, Washington, DC 20415. Phone (202) 606-0020 FAX (202) 606-2183 or email at [veronica.villalobos@opm.gov](mailto:veronica.villalobos@opm.gov).

U.S. Office of Personnel Management.

**Katherine L. Archuleta,**  
*Director.*

[FR Doc. 2015-03775 Filed 2-23-15; 8:45 am]

**BILLING CODE 6820-B2-P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request Copies Available From:* U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

#### *Extension:*

Rule 15c2-12, SEC File No. 270-330, OMB Control No. 3235-0372.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 15c2-12—Municipal Securities Disclosure (17 CFR 240.15c2-12) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act"). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Paragraph (b) of Rule 15c2-12 requires underwriters of municipal securities: (1) To obtain and review an official statement "deemed final" by an issuer of the securities, except for the omission of specified information prior to making a bid, purchase, offer, or sale of municipal securities; (2) in non-competitively bid offerings, to send, upon request, a copy of the most recent preliminary official statement (if one exists) to potential customers; (3) to contract with the issuer to receive, within a specified time, sufficient copies of the final official statement to comply with Rule 15c2-12's delivery requirement and the rules of the Municipal Securities Rulemaking Board ("MSRB"); (4) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; and (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or the obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide certain information on a continuing basis to the MSRB in an electronic format as prescribed by the MSRB. The information to be provided consists of: (1) Certain annual financial and operating information and audited financial statements ("annual filings"); (2) notices of the occurrence of any of 14 specific events ("event notices"); and (3) notices of the failure of an issuer or obligated person to make a submission

required by a continuing disclosure agreement ("failure to file notices").

Rule 15c2-12 is intended to enhance disclosure in the municipal securities market, and thereby reduce fraud, by establishing standards for obtaining, reviewing, and disseminating information about municipal securities by their underwriters.

Municipal offerings of less than \$1 million are exempt from the rule, as are offerings of municipal securities issued in large denominations that are sold to no more than 35 sophisticated investors or have short-term maturities.

The Commission previously published a 60-day notice on this collection of information (the "60-day Notice").<sup>1</sup> Commission staff has considered the comments received in response to the 60-day Notice and is revising many of the estimates included in the 60-day Notice. In response to previous comment solicitations in 2008 and 2009 on the PRA burdens associated with Rule 15c2-12, the Commission received either no comments, or comments that did not include any quantified alternative estimates or that did not include any supporting data. In contrast to those previous comment solicitations, the Commission received comment letters in response to the 60-day Notice that included comments providing specific alternative estimates of the PRA burdens of Rule 15c2-12 and specific data to support the commenters' alternative estimates. Based on the new information commenters provided in response to the 60-day Notice, Commission staff is revising many of its hourly burden estimates. It is now estimated that approximately 20,000 issuers, 250 broker-dealers, and the MSRB will spend a total of 621,758 hours per year complying with Rule 15c2-12. Based on data from the MSRB through September 2014 and annualized through December 2014, issuers will submit approximately 62,596 annual filings to the MSRB in 2014. Commission staff estimates that an issuer will require approximately seven hours to prepare and submit annual filings to the MSRB. Therefore, the total annual burden on issuers to prepare and submit 62,596 annual filings to the MSRB is estimated to be 438,172 hours. Based on data from the MSRB through September 2014 and annualized through December 2014, issuers will submit approximately 73,480 event notices to the MSRB in 2014. Commission staff estimates that an issuer will require approximately two hours to prepare and submit event

<sup>1</sup> See SEC File No. 270-330, OMB Control No. 3235-0372, 79 FR 68730.



notices to the MSRB. Therefore, the total annual burden on issuers to prepare and submit 73,480 event notices to the MSRB is estimated to be 146,960 hours. Based on data from the MSRB through September 2014 and annualized through December 2014, issuers will submit approximately 7,063 failure to file notices to the MSRB in 2014.

Commission staff estimates that an issuer will require approximately two hours to prepare and submit failure to file notices to the MSRB. Therefore, the total annual burden on issuers to prepare and submit 7,063 failure to file notices to the MSRB is estimated to be 14,126 hours. Commission staff estimates that the total annual burden on broker-dealers to comply with Rule 15c2-12 is 22,500 hours. Finally, Commission staff estimates that the MSRB will incur an annual burden of 12,699 hours to collect, index, store, retrieve, and make available the pertinent documents under Rule 15c2-12.

Based on data provided by the MSRB, the Commission estimates that up to 65% of issuers may use designated agents to submit some or all of their continuing disclosure documents to the MSRB. The Commission estimates that the average total annual cost that may be incurred by issuers that use the services of a designated agent will be \$9,750,000.<sup>2</sup> The Commission estimates that the MSRB will incur total annual costs of \$10,000 based on the MSRB's estimates of the hardware and software costs for the MSRB's Electronic Municipal Market Access ("EMMA") system in the MSRB's fiscal year 2014.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 30 days of this publication.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta.Ahmed@omb.eop.gov](mailto:Shagufta.Ahmed@omb.eop.gov); and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

February 18, 2015.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-03670 Filed 2-23-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-31457; File No. 812-14330]

### Eagle Point Credit Company Inc., et al.; Notice of Application

February 18, 2015.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by section 17(d) of the Act and rule 17d-1 under the Act.

**SUMMARY:** *Summary of Application:* Applicants request an order to permit Eagle Point Credit Company Inc. to co-invest in portfolio companies with certain affiliated investment funds.

*Applicants:* Eagle Point Credit Company Inc. ("EPCC"), Eagle Point Credit Management LLC ("EPCM"), Eagle Point Credit Partners LP ("EPCP"), Eagle Point Credit GP I LP ("General Partner"), Eagle Point Credit Company Sub LLC ("EPCC Sub"), Eagle Point Credit Partners Sub Ltd. ("EPCP Sub"), and Eagle Point Credit Partners Sub III Ltd. ("EPCP Sub III").

**DATES:** *Filing Dates:* The application was filed on July 10, 2014, and amended on November 20, 2014 and January 30, 2015.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 16, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549-1090. Applicants: 20 Horseneck Lane, Greenwich, CT 06830.

**FOR FURTHER INFORMATION CONTACT:** Vanessa M. Meeks, Senior Counsel, or Melissa R. Harke, Branch Chief, at (202) 551-6825 (Chief Counsel's Office, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Applicants' Representations

1. EPCC (formerly Eagle Point Credit Company LLC) is a Delaware corporation that is registered as a closed-end management investment company under the Act. EPCC's primary investment objective is to generate high current income, with a secondary objective to generate capital appreciation. EPCC seeks to achieve its investment objectives by investing primarily in equity and junior debt tranches of collateralized loan obligations ("CLOs") that are collateralized by a diverse portfolio consisting primarily of below investment grade U.S. senior secured loans. The board of directors of EPCC is currently comprised of six directors, four of whom are not "interested persons," within the meaning of section 2(a)(19) of the Act (the "Non-Interested Directors"), of EPCC.

2. EPCP is a Cayman Islands exempted limited partnership that would be an investment company under the 1940 Act but for Section 3(c)(7) of the 1940 Act. EPCP's investment

<sup>2</sup> 20,000 (number of issuers) × .65 (percentage of issuers that may use designated agents) × \$750 (estimated average annual cost for issuer's use of designated agent) = \$9,750,000.

objectives and strategies are equivalent, in all material respects, to EPCP's Objectives and Strategies.<sup>1</sup> The General Partner has ultimate responsibility for the management of EPCP.

3. Each of EPCP Sub and EPCP Sub III is a Cayman Islands exempted company. EPCP Sub is a direct, wholly-owned special purpose subsidiary of EPCP. EPCP Sub III is a direct, wholly-owned special purpose subsidiary of EPCP Sub. EPCP Sub and EPCP Sub III are each excluded from registration as an investment company under Section 3(c)(7) of the 1940 Act. All investment decisions relating to the assets held at EPCP Sub and EPCP Sub III are made by EPCM as investment adviser to EPCP.

4. EPCM is a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). EPCM serves as the investment adviser to EPCC and EPCP.

5. Applicants seek an order ("Order") to permit one or more Regulated Funds<sup>2</sup> and/or one or more Affiliated Funds<sup>3</sup> to participate in the same investment opportunities through a proposed co-investment program (the "Co-Investment Program") where such participation would otherwise be prohibited under rule 17d-1 by (a) co-investing with each other in securities issued by issuers in private placement transactions in which an Adviser negotiates terms in addition to price;<sup>4</sup> and (b) making additional investments in securities of such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers

<sup>1</sup> "Objectives and Strategies" means a Regulated Fund's (as defined below) investment objectives and strategies, as described in the Regulated Fund's registration statement on Form N-2, other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 (the "Securities Act"), or under the Securities Exchange Act of 1934, and the Regulated Fund's reports to shareholders.

<sup>2</sup> "Regulated Fund" means EPCC and any Future Regulated Fund. "Future Regulated Fund" means any closed-end management investment company (a) that is registered under the Act, (b) whose investment adviser is an Adviser, and (c) that intends to participate in the Co-Investment Program. The term "Adviser" means (a) EPCM and (b) any future investment adviser that controls, is controlled by or is under common control with EPCM and is registered as an investment adviser under the Advisers Act.

<sup>3</sup> "Affiliated Fund" means any of EPCP and any Future Affiliated Fund. "Future Affiliated Fund" means any entity (a) whose investment adviser is an Adviser, (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, and (c) that intends to participate in the Co-Investment Program.

<sup>4</sup> The term "private placement transactions" means transactions in which the offer and sale of securities by the issuer are exempt from registration under the Securities Act.

("Follow-On Investments"). "Co-Investment Transaction" means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub, as defined below) participates together with one or more other Regulated Funds and/or one or more Affiliated Funds in reliance on the requested Order.

"Potential Co-Investment Transaction" means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub, as defined below) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.<sup>5</sup>

6. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.<sup>6</sup> Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Fund or Regulated Fund because it would be a company controlled by its parent Regulated Fund for purposes of rule 17d-1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Fund and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the requested order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Sub. The Regulated Fund's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Regulated Fund's Board would be informed of, and take into

<sup>5</sup> All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

<sup>6</sup> The term "Wholly-Owned Investment Sub" means an entity (i) that is wholly-owned by a Regulated Fund (with the Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments and issue debt on behalf of the Regulated Fund; (iii) with respect to which the Regulated Fund's board of directors or trustees has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub. EPCC Sub is a Delaware limited liability company and is a Wholly-Owned Investment Sub of EPCC.

7. When considering Potential Co-Investment Transactions for any Regulated Fund, the applicable Adviser will consider only the Objectives and Strategies, investment policies, investment positions, capital available for investment, and other pertinent factors applicable to that Regulated Fund. Due to the similarity in Objectives and Strategies of certain Regulated Funds with the investment objectives, policies and strategies of certain Affiliated Funds, the Adviser expects that investments for a Regulated Fund should also generally be appropriate investments for one or more other Regulated Funds and/or one or more Affiliated Funds, with certain exceptions based on available capital or diversification.<sup>7</sup>

8. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), the Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board eligible to vote under section 57(o) of the Act ("Eligible Directors"), and the "required majority," as defined in section 57(o) of the Act ("Required Majority")<sup>8</sup> will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.

9. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Fund and Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately

<sup>7</sup> The Regulated Funds, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

<sup>8</sup> Although each Regulated Fund will be a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

10. No Non-Interested Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than through share ownership in one of the Regulated Funds.

#### Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d-1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

2. Applicants state that in the absence of the requested relief, a Regulated Fund would be, in some circumstances, limited in its ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Fund's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

#### Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1. Each time an Adviser considers a Potential Co-Investment Transaction for an Affiliated Fund or another Regulated

Fund that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's Adviser will make an independent determination of the appropriateness of the investment for such Regulated Fund in light of the Regulated Fund's then-current circumstances.

2.(a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's "capital available for investment" in the asset class being allocated, up to the amount proposed to be invested by each. The applicable Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's available capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and Affiliated Fund) to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated Fund or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) The interests of the shareholders of the Regulated Fund; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Funds or Affiliated Funds would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of other Regulated Funds or Affiliated Funds; provided that, if any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) The Eligible Directors will have the right to ratify the selection of such director, board observer or participant, if any;

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Affiliated Fund or any Regulated Fund or any affiliated person of any Affiliated Fund or any Regulated Fund receives in connection with the right of an Affiliated Fund or a Regulated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who each may, in turn, share its portion with its affiliated persons) and the participating Regulated Funds in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Adviser, the Affiliated Funds or the other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by section 17(e) of the Act, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,<sup>9</sup> a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, Affiliated Fund, or any affiliated person of another Regulated Fund or Affiliated Fund is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Fund. The grant to an Affiliated Fund or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of a portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Affiliated Fund or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Adviser will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Funds and Regulated Funds.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Affiliated Fund and each Regulated Fund will bear its own expenses in connection with any such disposition.

8.(a) If any Affiliated Fund or any Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Adviser will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the

Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Adviser to be invested by each Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the participating Affiliated Funds in the same transaction, exceeds the amount of the opportunity; then the amount invested by each such party will be allocated among them pro rata based on each participant's "capital available for investment" in the asset class being allocated, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds was a business development company and each of the investments permitted under these conditions was approved by the Required Majority under section 57(f).

10. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an "affiliated

<sup>9</sup> This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

person” (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the 1933 Act) will, to the extent not payable by the Adviser under its respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee (including, without limitation, break-up or commitment fees but excluding broker’s fees contemplated by section 17(e) of the Act), received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by the Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Adviser, the other Regulated Funds or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of the Adviser, investment advisory fees paid in accordance with the agreement between the Adviser and the Regulated Fund or Affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015-03653 Filed 2-23-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31458; 812-14341]

### Realty Capital Income Funds Trust, et al.; Notice of Application

February 18, 2015.

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the “1940 Act”) for exemptions from sections 12(d)(1)(A), (B), and (C) of the 1940 Act, under sections 6(c) and 17(b) of the 1940 Act for an exemption from section 17(a) of the 1940 Act, and under section 6(c) of the 1940 Act for an exemption from rule 12d1-2(a) under the 1940 Act.

**SUMMARY:** Summary of the Application: Applicants request an order that would (a) permit certain registered open-end management investment companies that operate as “funds of funds” to acquire shares of certain registered open-end management investment companies, registered closed-end management investment companies, “business development companies,” as defined by section 2(a)(48) of the 1940 Act, and registered unit investment trusts that are within or outside the same group of investment companies as the acquiring investment companies and (b) permit certain registered open-end management investment companies relying on rule 12d1-2 under the 1940 Act to invest in certain financial instruments.

*Applicants:* Realty Capital Income Funds Trust (“Trust”), National Fund Advisors, LLC (“Adviser”), and Realty Capital Securities, LLC (the “Distributor”).

**DATES:** Filing Dates: The application was filed on August 1, 2014, and amended on December 3, 2014 and on February 6, 2015.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 16, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a

hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants, 405 Park Avenue, 15th Floor, New York, NY 10022.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Senior Counsel, at (202) 551-6868, or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel’s Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission’s Web site by searching for the file number, or for an applicant using the “Company” name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Applicants’ Representations

1. The Trust is an open-end management company registered under the 1940 Act and organized as a Delaware statutory trust. The Trust has multiple series which pursue distinct investment objectives and strategies.<sup>1</sup>

2. The Adviser, a Delaware limited liability company, is a registered investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser to each of the Funds of Funds (as defined below).<sup>2</sup> The Distributor is a Broker (as defined below) and serves as the existing Funds’ principal underwriter and distributor.

3. Applicants request relief to the extent necessary to permit: (a) A Fund (each, a “Fund of Funds,” and collectively, the “Funds of Funds”) to

<sup>1</sup> The applicants request that the order apply not only to any existing series of the Trust, but that the order also extend to any future series of the Trust, and any other existing or future registered open-end management investment companies and any series thereof that are, or may in the future be, advised by the Adviser or any other investment adviser controlling, controlled by, or under common control with the Adviser (included in the term “Adviser”) and that are part of the same group of investment companies, as defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended (the “1940 Act”), as the Trust (together with the existing series of the Trust, each series a “Fund,” and collectively, the “Funds”). All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

<sup>2</sup> All references to the term “Adviser” include successors-in-interest to the Adviser. A successor-in-interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

acquire shares of registered open-end management investment companies (each an “Unaffiliated Open-End Investment Company”), registered closed-end management investment companies, “business development companies” as defined by section 2(a)(48) of the 1940 Act (“business development companies”) (each registered closed-end management investment company and each business development company, an “Unaffiliated Closed-End Investment Company” and, together with the Unaffiliated Open-End Investment Companies, the “Unaffiliated Investment Companies”), and registered unit investment trusts (“UITs”) (the “Unaffiliated Trusts,” and together with the Unaffiliated Investment Companies, the “Unaffiliated Funds”), in each case, that are not part of the same “group of investment companies” as the Funds of Funds;<sup>3</sup> (b) the Unaffiliated Funds, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 (the “1934 Act”) (“Broker”) to sell shares of such Unaffiliated Funds to the Funds of Funds; (c) the Funds of Funds to acquire shares of other registered investment companies, including open-end management investment companies and series thereof, closed-end management investment companies, business development companies and UITs, in the same group of investment companies as the Funds of Funds (collectively, the “Affiliated Funds,” and, together with the Unaffiliated Funds, the “Underlying Funds”);<sup>4</sup> and (d) the Affiliated Funds, their principal underwriters and any Broker to sell

<sup>3</sup> For purposes of the request for relief, the term “group of investment companies” means any two or more registered investment companies, including closed-end investment companies or business development companies, that hold themselves out to investors as related companies for purposes of investment and investor services.

<sup>4</sup> Certain of the Underlying Funds may be registered under the 1940 Act as either UITs or open-end management investment companies and have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as exchange-traded funds (collectively, “ETFs” and each, an “ETF”). In addition, certain of the Underlying Funds may in the future pursue their investment objectives through a master-feeder arrangement in reliance on section 12(d)(1)(E) of the 1940 Act. In accordance with condition 12, a Fund of Funds may not invest in an Underlying Fund that operates as a feeder fund unless the feeder fund is part of the same “group of investment companies” as its corresponding master fund or the Fund of Funds. If a Fund of Funds invests in an Affiliated Fund that operates as a feeder fund and the corresponding master fund is not within the same “group of investment companies” as the Fund of Funds and Affiliated Fund, the master fund would be an Unaffiliated Fund for purposes of the application and its conditions.

shares of the Affiliated Funds to the Funds of Funds.<sup>5</sup> Applicants also request an order under sections 6(c) and 17(b) of the 1940 Act to exempt applicants from section 17(a) to the extent necessary to permit Underlying Funds organized as open-end investment companies (“Underlying Open-End Funds”) or UITs (“Underlying UITs”) to sell their shares to Funds of Funds and redeem their shares from Funds of Funds.

4. Applicants also request an exemption under section 6(c) from rule 12d1–2 under the 1940 Act to permit any existing or future Fund of Funds that relies on section 12(d)(1)(G) of the 1940 Act (“Section 12(d)(1)(G) Fund of Funds”) and that otherwise complies with rule 12d1–2 under the 1940 Act, to also invest, to the extent consistent with its investment objective(s), policies, strategies and limitations, in other financial instruments that may not be securities within the meaning of section 2(a)(36) of the 1940 Act (“Other Investments”).

#### Applicants’ Legal Analysis

##### A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the 1940 Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the 1940 Act prohibits a registered open-end investment company, its principal underwriter, and any Broker from selling the investment company’s shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company’s voting stock, or if the sale will cause more than 10% of the acquired company’s voting stock to be owned by investment companies generally. Section 12(d)(1)(C) prohibits an investment company from acquiring any security issued by a registered closed-end investment company if such acquisition would result in the acquiring company, any other investment companies having the same investment adviser, and companies controlled by such investment

<sup>5</sup> Applicants state that they do not believe that investments in business development companies present any particular considerations or concerns that may be different from those presented by investments in registered closed-end investment companies.

companies, collectively, owning more than 10% of the outstanding voting stock of the registered closed-end investment company.

2. Section 12(d)(1)(J) of the 1940 Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants request an exemption under section 12(d)(1)(J) of the 1940 Act from the limitations of sections 12(d)(1)(A), (B) and (C) to the extent necessary to permit: (i) The Funds of Funds to acquire shares of Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) and (C) of the 1940 Act; and (ii) the Underlying Funds, their principal underwriters and any Broker to sell shares of the Underlying Funds to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the 1940 Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A), (B), and (C), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants submit that the proposed structure will not result in the exercise of undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. Applicants assert that the concern about undue influence does not arise in connection with a Fund of Funds’ investment in the Affiliated Funds because they are part of the same group of investment companies. To limit the control a Fund of Funds or Fund of Funds Affiliate<sup>6</sup> may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Adviser and any person controlling, controlled by or under common control with the Adviser, and any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the 1940 Act advised or sponsored by the Adviser or any person controlling, controlled by or under common control

<sup>6</sup> A “Fund of Funds Affiliate” is the Adviser, any Sub-Adviser, promoter or principal underwriter of a Fund of Funds, as well as any person controlling, controlled by or under common control with any of those entities. An “Unaffiliated Fund Affiliate” is an investment adviser(s), sponsor, promoter or principal underwriter of any Unaffiliated Fund or any person controlling, controlled by or under common control with any of those entities.

with the Adviser (collectively, the “Group”) from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the 1940 Act. The same prohibition would apply to any other investment adviser within the meaning of section 2(a)(20)(B) of the 1940 Act to a Fund of Funds (“Sub-Adviser”) and any person controlling, controlled by or under common control with the Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the 1940 Act (or portion of such investment company or issuer) advised or sponsored by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser (collectively, the “Sub-Adviser Group”).

5. With respect to closed-end funds, applicants submit that one significant difference from open-end underlying funds is that, whereas open-end underlying funds may be unduly influenced by the threat of large-scale redemptions, closed-end underlying funds cannot be so influenced because they do not issue redeemable securities and, therefore, are not subject to large-scale redemptions. On the other hand, applicants state that closed-end underlying funds may be unduly influenced by a holder’s ability to vote a large block of stock. To address this concern, applicants submit that, with respect to a Fund’s investment in an Unaffiliated Closed-End Investment Company, (i) each member of the Group or Sub-Adviser Group that is an investment company or an issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the 1940 Act will vote its shares of the Unaffiliated Closed-End Investment Company in the manner prescribed by section 12(d)(1)(E) of the 1940 Act and (ii) each other member of the Group or Sub-Adviser Group will vote its shares of the Unaffiliated Closed-End Investment Company in the same proportion as the vote of all other holders of the same type of such Unaffiliated Closed-End Investment Company’s shares. Applicants state that, in this way, an Unaffiliated Closed-End Investment Company will be protected from undue influence by a Fund of Funds through the voting of the Unaffiliated Closed-End Investment Company’s shares.

6. Applicants propose other conditions to limit the potential for undue influence over the Unaffiliated Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated

Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (“Affiliated Underwriting”).<sup>7</sup>

7. To further ensure that an Unaffiliated Investment Company understands the implications of a Fund of Funds’ investment under the requested exemptive relief, prior to its investment in the shares of an Unaffiliated Investment Company in excess of the limit of section 12(d)(1)(A)(i) of the 1940 Act, a Fund of Funds and the Unaffiliated Investment Company will execute an agreement stating, without limitation, that each of their boards of directors or trustees (each, a “Board”) and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (the “Participation Agreement”). Applicants note that an Unaffiliated Investment Company (including an ETF or an Unaffiliated Closed-End Investment Company) would also retain its right to reject any initial investment by a Fund of Funds in excess of the limits in section 12(d)(1)(A)(i) of the 1940 Act by declining to execute the Participation Agreement with the Fund of Funds. In addition, an Unaffiliated Investment Company (other than an ETF or an Unaffiliated Closed-End Investment Company whose shares are purchased by a Fund of Funds in the secondary market) will retain its right at all times to reject any investment by a Fund of Funds. Finally, subject solely upon notice to a Fund of Funds and the passage of a notice period specified in the Participation Agreement, an Unaffiliated Fund could terminate such Participation Agreement with the Fund of Funds.

8. Applicants state that they do not believe that the proposed arrangement will result in excessive layering of fees. The Board of each Fund of Funds, including a majority of the trustees who are not “interested persons” within the meaning of section 2(a)(19) of the 1940 Act (the “Independent Trustees”), will find that the management or advisory fees charged under a Fund of Funds’

<sup>7</sup> An “Underwriting Affiliate” is a principal underwriter in any underwriting or selling syndicate that is an officer, director, trustee, advisory board member, investment adviser, sub-adviser or employee of the Fund of Funds, or a person of which any such officer, director, trustee, investment adviser, sub-adviser, member of an advisory board or employee is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to an Unaffiliated Fund is covered by section 10(f) of the 1940 Act.

advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. In addition, the Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b-1 under the 1940 Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or an affiliated person of the Adviser by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund.

9. Applicants further state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in rule 2830 of the Conduct Rules of the NASD (“NASD Conduct Rule 2830”).<sup>8</sup>

10. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the 1940 Act in excess of the limits contained in section 12(d)(1)(A) of the 1940 Act, except in certain circumstances identified in condition 12 below.

#### B. Section 17(a)

1. Section 17(a) of the 1940 Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the 1940 Act defines an “affiliated person” of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Funds may be deemed to be under the common control

<sup>8</sup> Any references to NASD Conduct Rule 2830 include any successor or replacement Financial Industry Regulatory Authority rule to NASD Conduct Rule 2830.

of the Adviser and, therefore, affiliated persons of one another. Applicants also state that the Funds of Funds and the Underlying Open-End Funds may also be deemed to be affiliated persons of one another if a Fund of Funds owns 5% or more of the outstanding voting securities of one or more of such Underlying Open-End Funds.

Applicants state that the sale of shares by the Underlying Open-End Funds or Underlying UITs to the Funds of Funds and the purchase of those shares from the Funds of Funds by the Underlying Open-End Funds and/or Underlying UITs (through redemptions) could be deemed to violate section 17(a).<sup>9</sup>

3. Section 17(b) of the 1940 Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company concerned; and (iii) the proposed transaction is consistent with the general purposes of the 1940 Act. Section 6(c) of the 1940 Act permits the Commission to exempt any person or transactions from any provision of the 1940 Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the 1940 Act. Applicants state that the terms of the transactions are reasonable and fair and do not involve overreaching. Applicants state that the terms upon which an Underlying Open-End Fund or Underlying UIT will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Open-End Fund.<sup>10</sup> Applicants also state that the

proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Open-End Fund and Underlying UIT, and with the general purposes of the 1940 Act.

#### *C. Other Investments by Section 12(d)(1)(G) Funds of Funds*

1. Section 12(d)(1)(G) of the 1940 Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the 1940 Act; (ii) the acquiring company holds only securities of acquired companies that are part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the 1940 Act, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the 1940 Act by a securities association registered under section 15A of the 1934 Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered UITs in reliance on section 12(d)(1)(F) or (G) of the 1940 Act.

2. Rule 12d1-2 under the 1940 Act permits a registered open-end investment company or a registered UIT that relies on section 12(d)(1)(G) of the 1940 Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the 1940 Act; (2) securities (other than securities

issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1-1 under the 1940 Act. For the purposes of rule 12d1-2, "securities" means any security as defined in section 2(a)(36) of the 1940 Act.

3. Applicants state that the proposed arrangement would comply with rule 12d1-2 under the 1940 Act, but for the fact that the Section 12(d)(1)(G) Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the 1940 Act for an exemption from rule 12d1-2(a) to allow the Section 12(d)(1)(G) Funds of Funds to invest in Other Investments. Applicants assert that permitting a Section 12(d)(1)(G) Fund of Funds to invest in Other Investments as described in the application would not raise any of the concerns that section 12(d)(1) of the 1940 Act was intended to address.

4. Consistent with its fiduciary obligations under the 1940 Act, a Section 12(d)(1)(G) Fund of Funds' Board will review the advisory fees charged by the Section 12(d)(1)(G) Fund of Funds' investment adviser(s) to ensure that the fees are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Section 12(d)(1)(G) Fund of Funds may invest.

#### **Applicants' Conditions**

##### *A. Investments by Funds of Funds in Underlying Funds*

Applicants agree that the order granting the requested relief to permit Funds of Funds to invest in Underlying Funds shall be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the 1940 Act. The members of a Sub-Adviser Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the 1940 Act. With respect to a Fund's investment in an Unaffiliated Closed-End Investment Company, (i) each member of the Group or Sub-Adviser Group that is an investment company or an issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the 1940 Act will vote its shares of the Unaffiliated Closed-End Investment Company in the manner prescribed by section 12(d)(1)(E) of the 1940 Act and (ii) each other member of the Group or Sub-Adviser Group will

<sup>9</sup> Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the 1940 Act. The Participation Agreement also will include this acknowledgement.

<sup>10</sup> Applicants note that a Fund of Funds will purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from sections 17(a)(1) and (2) to permit each Fund of Funds that is an affiliated person, or an affiliated person of an affiliated

person, as defined in section 2(a)(3) of the 1940 Act, of an Unaffiliated Fund that is an ETF to purchase or redeem shares from the ETF. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an ETF could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because an investment adviser to the ETF or an entity controlling, controlled by or under common control with the investment adviser to the ETF is also an investment adviser to the Fund of Funds. Applicants note that a Fund of Funds will purchase and sell shares of an Underlying Fund that is a closed-end fund (including a business development company) through secondary market transactions at market prices rather than through principal transactions with the closed-end fund. Accordingly, applicants are not requesting section 17(a) relief with respect to principal transactions with closed-end funds.



vote its shares of the Unaffiliated Closed-End Investment Company in the same proportion as the vote of all other holders of the same type of such Unaffiliated Closed-End Investment Company's shares. If, as a result of a decrease in the outstanding voting securities of any other Unaffiliated Fund, the Group or a Sub-Adviser Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of such Unaffiliated Fund, then the Group or the Sub-Adviser Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Sub-Adviser Group with respect to an Unaffiliated Fund for which the Sub-Adviser or a person controlling, controlled by or under common control with the Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the 1940 Act (in the case of an Unaffiliated Investment Company) or as the sponsor (in the case of an Unaffiliated Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to ensure that its Adviser and any Sub-Adviser to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Investment Company or Unaffiliated Trust or any Unaffiliated Fund Affiliate of such Unaffiliated Investment Company or Unaffiliated Trust in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the 1940 Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is

within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the 1940 Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Investment Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated

Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Investment Company will maintain and preserve permanently, in an easily accessible place, a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the 1940 Act, setting forth (1) the party from whom the securities were acquired, (2) the identity of the underwriting syndicate's members, (3) the terms of the purchase, and (4) the information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit set forth in section 12(d)(1)(A)(i) of the 1940 Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Investment Company in excess of the limit set forth in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the 1940 Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under the advisory contract

are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b-1 under the 1940 Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-Adviser, or an affiliated person of the Sub-Adviser, from an Unaffiliated Fund, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the 1940 Act, in excess of the limits contained in section 12(d)(1)(A) of the 1940 Act, except to the extent that such Underlying Fund: (a) Acquires such securities in compliance with section 12(d)(1)(E) of the 1940 Act and either is an Affiliated Fund or is in the same "group of investment companies" as its corresponding master fund; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the 1940 Act); or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire

securities of one or more investment companies for short-term cash management purposes or (ii) engage in inter-fund borrowing and lending transactions.

#### *B. Other Investments by Section 12(d)(1)(G) Funds of Funds*

Applicants agree that the order granting the requested relief to permit Section 12(d)(1)(G) Funds of Funds to invest in Other Investments shall be subject to the following condition:

1. Applicants will comply with all provisions of rule 12d1-2 under the 1940 Act, except for paragraph (a)(2) to the extent that it restricts any Section 12(d)(1)(G) Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Brent J. Fields,**

*Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-74294; File No. SR-BYX-2015-10]**

### **Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 8.15 Entitled "Imposition of Fines for Minor Violation(s) of Rules"**

February 18, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 5, 2015, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange filed a proposal to amend Rule 8.15 entitled "Imposition of Fines for Minor Violation(s) of Rules." The text of the proposed rule change is available at the Exchange's Web site at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The Exchange proposes to amend Rule 8.15 in order to make it substantively identical to the corresponding rules on EDGX Exchange, Inc. ("EDGX") and EDGA Exchange, Inc. ("EDGA"), as further described below. Earlier this year, the Exchange and its affiliate, BATS Exchange, Inc. ("BZX"), received approval to effect a merger (the "Merger") of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA (together with BZX, BYX and EDGX, the "BGM Affiliated Exchanges").<sup>5</sup> In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system and regulatory functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to amend Rule 8.15 in order to make the rule substantively identical to corresponding rules on EDGA and EDGX related to minor violations of exchange rules in order to provide a consistent regulatory approach across each of the BGM Affiliated Exchanges.

Currently, Rule 8.15(a) provides that, in lieu of commencing a disciplinary

<sup>5</sup> See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

proceeding as described in Rules 8.1 through 8.13, the Exchange may, subject to the requirements set forth in this Rule, impose a fine, not to exceed \$2,500, on any Member, associated person of a Member, or registered or non-registered employee of a Member, for any violation of a Rule of the Exchange, which violation the Exchange shall have determined is minor in nature. The Exchange is proposing to add language in order to make Rule 8.15(a) and Interpretation and Policy .01 to Rule 8.15 identical to the corresponding EDGA and EDGX rules.<sup>6</sup> Specifically, the Exchange is proposing that the Exchange may, if no exceptional circumstances are present, impose a fine based upon a determination that there exists a pattern or practice of violative conduct. As proposed, the Exchange also may aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected.

Currently, under Interpretation and Policy .01 to Rule 8.15, the Exchange fines individuals \$100, \$300, and \$500 and Member firms \$500, \$1,000, and \$2,500 for their first, second, and third time fined under Rule 8.15 within a rolling 12-month period, respectively, for the following violations of Exchange rules: (a) Rule 4.2 and Interpretation and Policy thereunder requiring the submission of responses to Exchange requests for trading data within a specified time period; (b) Rule 11.19 requirement to identify short sale orders as such; and (c) Rule 11.20 requirement to comply with locked and crossed market rules. The Exchange is proposing to add two additional instances to the fine structure described above. These additional instances include: (1) Rule 3.5 Advertising Practices; and (2) Rule 12.11 Interpretation and Policy .01 and Exchange Act Rule 604—Failure to properly display limit orders.<sup>7</sup>

The Exchange is also proposing to make several non-substantive changes to Interpretation and Policy .01 to Rule 8.15. First, the Exchange is proposing to change the numbering within the rule to

reflect the additions described above. Second, the Exchange is proposing to change the phrase “limit orders” in paragraph (e) of Interpretation and Policy .01 to Rule 8.15 to “quotations.” The Exchange believes that this change is non-substantive because, in this instance, the terms limit orders and quotations are interchangeable. Paragraph (e) is referring to the obligation of a Market Maker under Rule 11.8 to maintain continuous liquidity of both buy and sell orders, which are referred to as quotes or quotations in Rule 11.8, at certain prices. Based on Exchange functionality, the only way to enter priced orders that could meet such quotation obligations would be through use of limit orders. As such, the Exchange believes that the proposed change is non-substantive, makes the rule more clear, and more accurately reflects the language used in Exchange Rule 11.8. Further, the change would make the rule text identical to that of EDGA and EDGX.

## 2. Statutory Basis

The Exchange believes that the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. As mentioned above, the proposed rule changes, combined with the planned filing for BZX,<sup>10</sup> would allow the BGM Affiliated Exchanges to provide a consistent set of rules as it relates to the imposition of fines for minor violations of rules across each of the exchanges. Consistent rules, in turn, will simplify the regulatory requirements for Members of the Exchange that are also participants on BZX, EDGA, and/or EDGX. The proposed rule change would provide greater harmonization between rules of similar purpose on the BGM Affiliated Exchanges, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in

facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

Specifically, the changes to Rule 8.15(a) and the addition of new paragraphs (d) and (e) to Interpretation and Policy .01 of Rule 8.15 will provide the Exchange with additional ways to handle related minor violations as well as providing the Exchange with the ability to handle other rule violations which it believes to be minor under Rule 8.15. The Exchange believes that, in addition to the benefits to Members described above, the proposal will enhance the Exchange’s ability to efficiently regulate its Members, meaning that the proposed rule change is equitable and will promote fairness in the market place.

Further, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act<sup>11</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. The Exchange also believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen the Exchange’s ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of a particular violation.

Finally, the Exchange believes that the non-substantive changes discussed above will contribute to the protection of investors and the public interest by helping to avoid confusion with respect to Exchange rules.

### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the act. To the contrary, allowing the Exchange to implement substantively identical rules related to the imposition of fines for minor violations of rules across each of the BGM Affiliated Exchanges does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BZX, EDGA, and EDGX rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members of the

<sup>6</sup> See EDGX Rule 8.15(a) and Interpretation and Policy .01 to Rule 8.15 and EDGA Rule 8.15(a) and Interpretation and Policy .01 to Rule 8.15.

<sup>7</sup> The Exchange notes that these proposed changes would make the Exchange’s Rule 8.15 substantively identical to the corresponding EDGA and EDGX rules based on filings SR-EDGA-2015-11 and SR-EDGX-2015-10. Such filings propose to remove paragraph (d) of Interpretation and Policy .01 to both EDGA and EDGX rules 8.15. The Exchange also notes that BZX intends to file a proposal very similar to this proposal that will align the rules related to fines for minor violation of exchange rules across each of the BGM Affiliated Exchanges.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See supra note 7.

<sup>11</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

BGM Affiliated Exchanges and an enhanced ability of the BGM Affiliated Exchanges to fairly and efficiently regulate members, which will further enhance competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and paragraph of Rule 19b-4(f)(6) thereunder.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BYX-2015-10 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-BYX-2015-10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use

only one method. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BYX-2015-10 and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-03669 Filed 2-23-15; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-74298; File No. SR-NYSEMKT-2014-95]

**Self-Regulatory Organizations; NYSE MKT LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Partial Amendment No. 1 and Partial Amendment No. 2, Amending Rule 13—Equities and Related Rules Governing Order Types and Modifiers**

February 18, 2015.

**I. Introduction**

On October 31, 2014, NYSE MKT LLC ("NYSE MKT" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule

19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Exchange Rule 13—Equities and other related Exchange rules governing order types and order modifiers. The proposed rule change was published in the **Federal Register** on November 20, 2014.<sup>3</sup> On November 14, 2014, the Exchange submitted Partial Amendment No. 1 to the Commission.<sup>4</sup> On December 22, 2014, the Exchange submitted Partial Amendment No. 2 to the Commission. On December 22, 2014, pursuant to section 19(b)(2) of the Act,<sup>5</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>6</sup> The Commission has received no other comment on the proposal. This order institutes proceedings under section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposal.

**II. Description of the Proposal**

The Exchange proposes to amend Exchange Rule 13—Equities by re-grouping and re-numbering existing order types and order modifiers. The Exchange also proposes to make changes to certain order types and order modifiers. In addition, the Exchange proposes to amend certain rules to remove references to functionality that is no longer operative. Under the proposal, Rule 13—Equities would be reorganized into six categories: (a) Primary order types; (b) time in force modifiers; (c) auction-only orders; (d) orders with instructions not to display all or a portion of the order; (e) orders with instructions not to route; and (f) additional orders and modifiers.

*A. Primary Order Types*

Proposed section (a) of Rule 13—Equities would set forth two primary order types—Market Orders and Limit Orders—and specify which orders are eligible for automatic executions. The Exchange proposes to delete the current definition of "Auto Ex Order" and

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 73593 (Nov. 14, 2014), 79 FR 69153 ("Notice").

<sup>4</sup> The Exchange also submitted a copy of the amendment to the public comment file. See Letter from Sudhir Bhattacharyya, Vice President, New York Stock Exchange, to Kevin M. O'Neill, Deputy Secretary, Commission (Nov. 14, 2014).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 73913, 79 FR 78531 (Dec. 30, 2014). The Commission designated February 18, 2015, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

proposes that all orders entered electronically will be eligible for automatic executions. Interest represented manually by a floor broker, however, would not be eligible for automatic execution.

The Exchange is not changing the definition of "Market Order" and would replace the current term "Display Book" with the proposed term "Exchange systems."<sup>8</sup> For Limit Orders, the Exchange's rules currently define marketable Limit Order. The Exchange proposes to add a definition for Limit Order as an order to buy or sell a stated amount of a security at a specified price or better. The marketable Limit Order definition would remain unchanged.

#### B. Time in Force Modifiers

Proposed section (b) of Rule 13—Equities would set forth the Time in Force modifiers for orders: (1) Day; (2) Good til Cancelled ("GTC") or Open; and (3) Immediate or Cancel ("IOC"). For Day modifiers, the Exchange proposes to allow only Limit Orders to be designated as Day orders. Currently, any order could be designated as a Day order. For the GTC or Open modifier, the Exchange is proposing to allow only Limit Orders to be designated with the GTC or Open modifier. Currently, any order could be a GTC or Open order. Further, the Exchange currently allows a GTC order that is designated "Off Hours eligible" to be executed through the Off-Hours Trading Facility. The Exchange is proposing that GTC orders be ineligible to be executed in any Off-Hours Trading Facility.

With respect to IOC modifiers, the Exchange currently has three different modifiers: Regulation NMS-compliant IOC; Exchange IOC; and IOC-MTS (minimum trade size). The Exchange is making non-substantive changes to the Regulation NMS-compliant IOC order modifier.<sup>9</sup> The Exchange is also proposing to rename the Exchange IOC order modifier as the NYSE IOC order and to make other non-substantive changes. For the IOC-MTS order modifier, the Exchange is proposing to make non-substantive changes.

#### C. Auction-Only Orders

Proposed section (c) of Rule 13—Equities would set forth five Auction-

Only Orders: (1) Closing Offset ("CO") Orders; (2) Limit-on-Close ("LOC") Orders; (3) Limit-on-Open ("LOO") Orders; (4) Market-on Close ("MOC") Orders; and (5) Market-on-Open ("MOO") Orders.<sup>10</sup> The Exchange is proposing to make non-substantive changes to these definitions.

#### D. Non-Displayable Orders (All or a Portion)

Proposed section (d) of Rule 13—Equities contains orders that are partially or fully undisplayed. There are two types of non-displayable orders: Mid-Point Passive Liquidity ("MPL") Orders and Reserve Orders. The Exchange proposes to amend the MPL order modifier with a minimum triggering volume ("MTV") and to make other, non-substantive changes. Specifically, Exchange systems would reject an MPL Order on entry if the MTV is larger than the size of the MPL Order, and Exchange systems would reject a request to partially cancel a resting MPL Order if it would result in the MTV being larger than the remaining size of the order. The Exchange believes that this proposed change would prevent an entering firm from causing an MPL Order to have an MTV that is larger than the order, thereby bypassing contra-side interest that is larger than the size of the MPL Order.

With respect to Reserve Orders, the Exchange proposes to make non-substantive changes to the definition. The Exchange proposes to add new rule text to state that a Minimum Display Reserve Order, which is an order that has a portion of the interest displayed when the order is or becomes the Exchange best bid or offer ("BBO") and a portion not displayed, would participate in both automatic and manual executions. The Exchange also proposes to add new rule text to state that a Non-Displayed Reserve Order, which is an order that is not displayed, would not participate in manual executions. The Exchange believes that these changes would reflect how the orders currently operate on the Exchange. Moreover, the Exchange proposes to change the circumstances in which the reserve interest of a Reserve Order would be available for execution. Currently, the Exchange's rule text specifies that reserve interest of a Non-Displayed Reserve Order is available for execution only after all displayed interest at the price has been executed.

The Exchange proposes to amend the rule text to specify that reserve interest of all Reserve Orders is available for execution only after all displayed interest at the price has been executed.

#### E. Do Not Route Orders

Proposed section (e) of Rule 13—Equities would set forth order modifiers and order types that would not be routed: (1) The Add Liquidity Only ("ALO") modifier; (2) Do Not Ship ("DNS") orders; and (3) Intermarket Sweep orders ("ISO"). For the ALO modifier, the Exchange proposes to make non-substantive changes and to update a cross-reference. The Exchange also proposes to add new rule text to specify that limit orders with the ALO modifier may participate in re-openings. Current Exchange rule text states that a Limit Order with the ALO modifier may participate in the Exchange's open or close. The Exchange is also proposing to make non-substantive changes to the DNS order and ISO definitions.<sup>11</sup>

#### F. Other Modifiers

Proposed section (f) of Rule 13—Equities would include the Exchange's other order instructions and modifiers: (1) Do Not Reduce ("DNR") modifier; (2) Do Not Increase ("DNI") modifier; (3) pegging interest; (4) Retail modifier; (5) Self-Trade Prevention ("STP") modifier; (6) Sell "Plus"—Buy "Minus" instruction; and (7) Stop order. The Exchange proposes to make non-substantive changes to the DNR and DNI modifiers.

With respect to pegging interest, the Exchange proposes to specify that pegging interest must be an e-Quote or d-Quote<sup>12</sup> and proposes to add new rule text to define "next available best-priced interest."<sup>13</sup> Currently, if the protected best bid or offer ("PBBO") is not within the specified price range of the pegging interest, the pegging interest will instead peg to the next available best-priced interest that is within the specified priced. For example, if the pegging interest to buy has a limit price of \$10.25, but the Exchange PBB is at \$10.30, the pegging interest would not peg to the Exchange PBB because that price is higher than what the limit price of the pegging interest. Instead, under the current Exchange rule, the pegging interest would peg to the "next available best-priced interest," but the term "next

<sup>8</sup> The Exchange proposes to replace the term "Display Book" with "Exchange systems" when the term refers to Exchange systems that receive and execute orders and with "Exchange book" when the term refers to the interest that has been entered and ranked in Exchange systems, as applicable throughout the proposed rule text. See Partial Amendment No. 1.

<sup>9</sup> Throughout the proposed rule text, the Exchange proposes to capitalize terms, including, but not limited to, Limit Order and Market Order.

<sup>10</sup> The Exchange also proposes to make non-substantive changes to Rule 501—Equities to use the term MOO/LOO Orders and MOC/LOC Orders. Further, the Exchange proposes to delete the reference to Good 'til Cross ("GTX") order in Rule 501—Equities, which the Exchange no longer uses.

<sup>11</sup> See Partial Amendment No. 2 (deleting inadvertent text referring to high-priced securities).

<sup>12</sup> See Partial Amendment No. 1 (changing rule text to clarify that only d-Quotes or e-Quotes may use pegging interest).

<sup>13</sup> See Partial Amendment No. 2 (adding ALO modifier text in current rule text that the Exchange states that it inadvertently omitted).

available best-priced interest” is not defined. The Exchange now proposes to define “next available best-priced interest” as (1) in the case of buy orders, the highest priced buy interest within the specified price range of pegging interest to buy, including displayable bids, Non-Display Reserve Orders, Non-Display Reserve e-Quotes, odd-lot sized interest, and protected bids on away markets, but not including non-displayed interest that is priced based on the PBBO, and (2) in the case of sell orders, the lowest priced sell interest within the specified price range of pegging interest to sell, including displayable offers, Non-Display Reserve Orders, Non-Display Reserve e-Quotes, odd-lot sized interest, and protected offers on away markets, but including non-displayed interest that is priced based on the PBBO.<sup>14</sup>

According to the Exchange, this proposed addition to the definition of pegging interest is necessary since pegging interest would not peg to either MPL Orders or Retail Price Improvement (“RPI”) Orders.<sup>15</sup> The Exchange notes that this would be applicable regardless of whether an MPL Order or RPI Order is marketable and provided the following example in the filing.

For example, assume the best protected bid (“PBB”) is \$10.00, the Exchange has pegging interest to buy at \$9.99, an MPL Order priced at \$9.98 and a Non-Displayed Reserve Order to buy priced at \$9.97. Because the PBB is outside the specified price range of the pegging interest to buy, it would peg to the next available best-priced interest, which in this scenario would be the Non-Displayed Reserve Order to buy priced at \$9.97. The pegging interest to buy would not peg to the MPL Order to buy priced at \$9.98.<sup>16</sup>

The Exchange proposes to update cross-references to the Retail modifier and make non-substantive changes to the STP modifier and the Sell “Plus”—Buy “Minus” instruction. With respect to Stop orders, the Exchange proposes to make non-substantive changes and to replace the term “Exchange’s automated

<sup>14</sup> The Commission notes that this proposed new definition is based on current Supplemental Material .10 to Exchange Rule 13—Equities, which defines “best-priced sell interest” and “best-priced buy interest.” These two definitions were adopted in connection with the ALO order and Day ISO order, both displayable orders, to allow for the Exchange to re-price such orders in the event of a locked or crossed market. See Securities Exchange Act Release No. 73333 (Oct. 9, 2014), 79 FR 62223 (Oct. 16, 2014).

<sup>15</sup> See Exchange Rule 107C(a)(4)—Equities. The Exchange has not stated whether this change to the rule reflects a new order-type functionality or whether it reflects an existing functionality that was not previously explicit in the Exchange’s rules.

<sup>16</sup> See Notice, *supra* note 3, at n.18, 79 FR at 69156, n.18.

order routing system” with “Exchange systems.”

### G. Other Proposed Changes

The Exchange proposes to move the definition of “Routing Broker” to Rule 17(c)—Equities. The Exchange also proposes to amend the definition of Not Held orders and relocate that definition to Supplementary Material .20 to Rule 13—Equities. The Exchange proposes that a Not Held order would refer to an unpriced, discretionary order that has been voluntarily categorized as such by the customer and as to which the customer has granted the member or member organization price and time discretion.

The Exchange also proposes to amend Rule 70.25—Equities governing d-Quotes to clarify that certain functionality set forth in the Rule is no longer available. Specifically, Rule 70.25(c)(ii)—Equities currently provides that a Floor broker may designate a maximum size of contra-side volume with which it is willing to trade using discretionary pricing instructions. Because this functionality is not available, the Exchange proposes to delete references to the maximum discretionary size parameter from Rules 70.25(c)(ii)—Equities and (c)(v)—Equities.

In addition, the Exchange proposes to amend Rule 70.25(c)(iv)—Equities to clarify that the circumstances under which the Exchange would consider interest displayed by other market centers at the price at which a d-Quote may trade are not limited to determining when a d-Quote’s minimum or maximum size range is met. Accordingly, the Exchange proposes to delete the clause “when determining if the d-Quote’s minimum and/or maximum size range is met.”

### III. Proceedings To Determine Whether To Approve or Disapprove SR-NYSEMKT-2014-95 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to section 19(b)(2)(B) of the Act<sup>17</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission encourages interested

<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

persons to provide additional comment on the proposed rule change.

Pursuant to section 19(b)(2)(B) of the Act,<sup>18</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposed rule change with section 6(b)(5) of the Act, which require that the rules of a national securities 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 that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>19</sup>

In particular, the Commission seeks comment on, and will consider, whether the Exchange’s proposal is consistent with section 6(b)(5) of the Act to the extent that the proposed amendments to Rule 13—Equities would permit a sophisticated market participant to enter a pegging order with a limit price that is set outside the PBBO in an attempt to reveal hidden interest on the book and then adjust its trading strategies to the detriment of the hidden order. The Commission notes that market participants may submit hidden orders for a variety of reasons, including to avoid disclosing to the overall market that they have interest in trading a particular security. When pegging interest was approved by the Commission, the Exchange explained that this order type was intended to permit floor brokers to be represented at the Exchange’s BBO in a rapidly changing market.<sup>20</sup> The Exchange has

<sup>18</sup> *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See *id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. See *id.*

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> See Securities Exchange Act Release No. 54577 (Oct. 6, 2006), 71 FR 60208 (Oct. 12, 2006) (approving the New York Stock Exchange Inc.’s proposal to allow pegging instructions for Floor Broker Agency Interest Files (e-quotes)). In the notice to that filing, the Exchange stated, “In the Hybrid Market, a Floor broker needs to be represented in the BBO in order to participate in automatic executions. The e-Quotes provide Floor brokers with the mechanism to be part of the quote. However, in a more automated environment, the BBO may change rapidly and the e-Quoting process, as it currently exists, may not be sufficient to enable

not offered any explanation as to why permitting its pegging orders to peg to hidden interest is, on balance, good for its members or the quality of its market or why it is otherwise consistent with section 6(b)(5) of the Act. Similarly, the Exchange's filing does not explain why this use of an order type would be available to floor brokers or to those who submit orders through a floor broker, but would not otherwise be available to other exchange members.

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>21</sup> Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 17, 2015. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 31, 2015.

The Commission invites the written views of interested persons concerning whether the proposal is consistent with section 6(b)(5) of the Act,<sup>22</sup> any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change.

Floor brokers to stay with a quickly changing quote." See Securities Exchange Act Release No. 61081 (Dec. 1, 2009), 74 FR 64105 (Dec. 7, 2009) (approving the predecessor Exchange's proposal to update d-Quote functionality and provide for e-Quotes to peg to the National Best Bid or Offer). The Commission further notes that the Exchange's rules are based on the rules of the New York Stock Exchange, Inc.

<sup>21</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 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).

<sup>22</sup> *Id.*

In particular, the Commission seeks comment on the following:

1. As described above, the Exchange proposes to add a new definition for "next available best-priced interest" in connection with pegging interest. As shown in the Exchange's example, discussed above,<sup>23</sup> the proposal would, when pegging interest is entered with a limit price outside the PBBO, allow pegging interest to peg to a Non-Display Reserve Order or Non-Display Reserve e-Quote that is not at the top of the Exchange's book. Therefore, the functionality would allow the member entering pegging interest with a limit price to potentially detect the presence of a hidden order outside the PBBO, if there are no other displayable orders at that price point. Given that, as noted above,<sup>24</sup> pegging interest was instituted originally to facilitate the ability of manual Floor brokers to maintain orders at the best displayed prices, do commenters believe that allowing pegging interest to potentially operate in this manner is beneficial, or detrimental, to Exchange members or the quality of the Exchange's market?<sup>25</sup>

2. Do commenters believe that the Exchange's proposal sufficiently describes the characteristics, functionality, priority, and execution pricing of each of its order types and modifiers? If not, which aspects of the Exchange's order types and modifiers remain ambiguous or undescribed? Please be specific.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2014-95 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2014-95. This file number should be included on the subject line if email is used. To help the

<sup>23</sup> See text accompanying note 16, *supra*.

<sup>24</sup> See, *supra*, note 20 and accompanying text.

<sup>25</sup> The Commission notes that, while ALO orders or Day ISO orders on the Exchange can be re-priced in a manner that reveals the existence of hidden orders, ALO orders or Day ISO orders are displayed and would tighten the quoted spread. The Commission approved the ALO order and the Day ISO order re-pricing mechanism on the basis that their re-pricing mechanism would contribute to public price discovery, an objective consistent with the requirements of the Act. See Securities Exchange Act Release No. 73333 (Oct. 9, 2014), 79 FR 62223 (Oct. 16, 2014) (approving the Exchange's proposal to make the Add Liquidity Only modifier available for Limit Orders and to make the Day Time-In-Force condition and Add Liquidity Only modifier available for Intermarket Sweep Orders).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2014-95 and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015-03678 Filed 2-23-15; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74289; File No. SR-FINRA-2015-003]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Codes of Arbitration Procedure To Increase the Late Cancellation Fee

February 18, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 5, 2015, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed

<sup>26</sup> 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. 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

FINRA is proposing to amend Rules 12214 and 12601 of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and Rules 13214 and 13601 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") (together, "Codes") to require that parties give more advance notice before cancelling or postponing a hearing, or be assessed a higher late cancellation fee if such notice is not provided. The text of the proposed rule change is available at the principal office of FINRA, on FINRA's Web site at <http://www.finra.org>, 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

##### Introduction

Under current Rules 12601(b)(2) and 13601(b)(2) of the Codes, each arbitrator selected for a case receives a \$100 honorarium when a hearing is postponed or cancelled<sup>3</sup> within three business days of the scheduled date. However, if the postponement or cancellation occurs more than three business days in advance of the

<sup>3</sup> If the parties settle an arbitration case, hearings that were scheduled to occur after settlement are cancelled, and depending on the timing of the cancellation, could result in the assessment of a cancellation fee. See Rules 12902(d) and 13902(d). These rules incorporate the fees and costs incurred under Rules 12601 and 13601, and, therefore, would incorporate the proposed rule change to the late cancellation fee.

scheduled hearing, the arbitrators do not receive an honorarium.<sup>4</sup>

FINRA is proposing to amend Rules 12601(b)(2) and 13601(b)(2)<sup>5</sup> to require that if a postponement or cancellation request is made by one or more parties within ten calendar days before a scheduled hearing session and granted, the party or parties making the request would pay a fee of \$600 per arbitrator ("Late Cancellation Fee"). Under the proposed rule change, therefore, the Late Cancellation Fee for a three-person arbitration panel would be \$1,800, instead of \$300 under the current rules.<sup>6</sup> The primary purpose of the proposed rule change is to encourage parties to provide more advance notice of postponements and cancellations, or, in the alternative, to compensate arbitrators more than they are currently paid for lost time and opportunities in the event of a late postponement or cancellation.

Under the proposed rule change, the Late Cancellation Fee would be assessed if a hearing is postponed or cancelled within ten calendar days before a scheduled hearing session. To simplify the discussion, the following explanation will use the term "cancellation" or a variation thereof to describe either scenario.

##### Background

In FINRA arbitration, once the parties select arbitrators, they hold an initial pre-hearing conference with the parties, usually over the telephone, to discuss procedural issues, the mediation alternative, discovery, and scheduling of hearings.<sup>7</sup> In many cases, the hearing dates are selected months in advance, thus requiring arbitrators to reserve these dates and forego other opportunities that would result in a conflict with the scheduled dates.

<sup>4</sup> For each postponement agreed to by the parties, or granted upon request of one or more parties, FINRA assesses a postponement fee to the parties, equal to the applicable hearing session fee ("Postponement Fee"). See Rules 12601(b)(1) and 13601(b)(1). This fee is paid to FINRA and not passed through to the arbitrators.

<sup>5</sup> FINRA would also amend the Late Cancellation Fee reference (defined *infra*) in Rules 12214(a) and 13214(a).

<sup>6</sup> Pursuant to an analysis of FINRA's data, for the period from September 1, 2013 to August 31, 2014, approximately 80 percent of arbitration cases were heard by a three-person panel. The number of arbitrators that the parties may select for a case typically depends on the amount of the claim. See Rules 12401 and 13401 (describing, among other things, the parameters for when panels may consist of three arbitrators).

<sup>7</sup> A hearing is a meeting between the parties and the arbitrators of four hours or less to determine the merits of the arbitration. See Rules 12100(m) and 13100(m); see also Rules 12100(n) and 13100(n). A typical day in an arbitration case has two hearing sessions.

FINRA has received many complaints from arbitrators concerning the current late cancellation rule ("Late Cancellation Rule"),<sup>8</sup> which applies when parties postpone, settle in advance of, or otherwise cancel a scheduled hearing session within three business days of its start date. It is the most frequent complaint Dispute Resolution staff receives from arbitrators.

In fact, when FINRA formed the Dispute Resolution Task Force ("Task Force") in 2014 to consider possible enhancements to its arbitration and mediation forum, the majority of arbitrator responses to the Task Force's request for comments suggested that FINRA should address the issue of late hearing cancellation requests.<sup>9</sup> According to feedback received by FINRA, the current rule is inadequate because the three-business-day cancellation window does not provide arbitrators, who have committed to dates to hear a case, with enough time to schedule other income-generating opportunities. Moreover, the \$100 honorarium for these late cancellations does not adequately compensate arbitrators for the preparation time expended and the income that would have been earned from conducting a hearing. FINRA has learned that the lack of sufficient notice and compensation is frustrating for arbitrators and is a reason some arbitrators leave FINRA's roster.

#### Proposal To Increase Late Cancellation Fees and Cancellation Timeframe

FINRA is proposing, therefore, to amend the Codes<sup>10</sup> to require that parties give more advance notice before cancelling a hearing, or be assessed a higher Late Cancellation Fee if such notice is not provided. Specifically, FINRA would amend Rule 12601(b)(2) to require that if a cancellation request is made by one or more parties within ten calendar days before a scheduled hearing session and granted, the party or parties making the request shall pay a

<sup>8</sup> See Rules 12601(b)(2) and 13601(b)(2).

<sup>9</sup> The Task Force comprises individuals from the public and industry sectors, who work together to suggest strategies to enhance the transparency, impartiality, and efficiency of FINRA's securities dispute resolution forum for all participants. See *FINRA Dispute Resolution Task Force*, available at <http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/MoreonFINRADisputeResolution/P600966>.

<sup>10</sup> FINRA is proposing to amend Rules 12601 and 12214 of the Customer Code and Rules 13601 and 13214 of the Industry Code. To simplify the explanation, FINRA's discussion of the proposed rule changes focuses on changes to the Customer Code rules. However, the proposed rule changes, and, thus, the discussion also apply to the Industry Code rules.



fee of \$600 per arbitrator in addition to the Postponement Fee.

First, the proposed rule change would move from three business days to ten calendar days the timeframe within which parties must cancel hearings to avoid incurring the proposed Late Cancellation Fee.<sup>11</sup> This change would provide arbitrators with more advance notice than they currently receive, which could give them an opportunity to secure other income-generating opportunities. Further, it could help them minimize the time lost in preparing for their assigned arbitration hearings, which, depending on the number of parties involved and the complexity of the case, could involve many hours of reviewing materials. For example, parties sometimes submit detailed exhibits and legal briefs to support their positions and theories of the case for arbitrators to review in advance of the hearings. Other than the honoraria funded by the Late Cancellation Fee, FINRA does not compensate arbitrators for their preparation time in the event the hearings are cancelled.

Second, the proposed rule change would increase the honorarium for late cancellations from \$100 to \$600 per arbitrator. The proposal would make the honorarium equal to that which arbitrators would have received for one typical day of hearings,<sup>12</sup> no matter how many consecutive days are cancelled.<sup>13</sup> The Late Cancellation Fee would be charged to the party or parties making the request.<sup>14</sup> However, Rule 12601(b)(2) provides that the arbitrators may allocate all or a portion of the fee to the non-requesting party if the arbitrators determine that the non-requesting party caused or contributed to the cancellation. If an extraordinary circumstance prevents a party or parties

from making a timely cancellation request, arbitrators may use their discretion to waive the fee.

FINRA notes that there are some mitigation strategies that parties could employ to avoid incurring a Late Cancellation Fee. As the objective of the proposal is to encourage parties to address issues earlier in their cases, parties could provide notice of a cancellation ten or more calendar days prior to the first scheduled hearing session. Further, if the parties agree to cancel the hearing inside the ten-day window, then they could negotiate which party pays this fee or a percentage of the fee. In addition the rules permit the panel to waive the fees, and they may do so, if the circumstances warrant, like a sudden illness or accident.

Third, the proposed rule change would shift the phrase “and granted” to the end of the first dependent clause in Rule 12601(b)(2) to clarify that the timing of the parties’ cancellation request controls whether the fee is assessed, not the timing of the arbitrators’ decision on such request, if a decision is required. For example, the parties may jointly request cancellation of a hearing. A joint request means that the parties to the arbitration agree to cancel the hearing and, thus, the arbitrator or panel is not required to decide the request. Under the proposed rule change, if the parties make such a request ten calendar days or more before a scheduled hearing, they would not be assessed a Late Cancellation Fee.<sup>15</sup> Further, one party may make a cancellation request without the agreement of other parties to the arbitration; in such a case, the arbitrator or panel would be required to decide the party’s motion. Under the proposed rule change, if the party makes such a motion ten calendar days or more before a scheduled hearing, the party would not be assessed a Late Cancellation Fee, regardless of when the arbitrators act on the request.

Fourth, FINRA notes that the Late Cancellation Fee is revenue-neutral to FINRA; it is currently passed through to the arbitrators. This practice would not change under the proposed rule change.

Last, FINRA is proposing to make conforming changes to Rule 12214(a), by amending the reference to the Late Cancellation Fee in Rule 12214(a).

The proposed rule change would address further a concern raised by many FINRA arbitrators—that the forum’s honoraria are too low. FINRA began the process of increasing arbitrator honoraria by filing the

Honoraria Increase Proposal with the SEC in June 2014, which proposed increasing the amount that arbitrators receive for one hearing session, among other things. On September 29, 2014, the SEC approved FINRA’s proposal.<sup>16</sup> While approval of the honoraria increases was an important step, FINRA also believes that changes are needed to the Late Cancellation Rule to further compensate arbitrators for lost opportunity costs as well as time spent in preparing for arbitration hearings that do not take place. Given arbitrators’ numerous responsibilities in preparing for, managing, and conducting arbitrations, FINRA believes the proposed changes to the Late Cancellation Rule as well as the other recently-implemented honoraria increases would better compensate the arbitrators for their time commitments and their service to the forum.

FINRA acknowledges that customers are likely to pay at least some of the increased Late Cancellation Fee under the proposed rule change. As a result, the proposed rule change might have an effect on settlement negotiations, especially if the potential settlement amount is small compared to the Late Cancellation Fee. For example, in cases where negotiations extend past the ten-calendar-day deadline, the increased cost of cancellation, under the proposed rule change, may affect the amount agreed upon in settlement or even the probability of settlement. FINRA notes that the forum’s rules are designed to help parties resolve their disputes fairly and efficiently. Parties pursue settlement when they believe it is in their financial interest to do so. The proposed fee increase would be another factor that parties would weigh in determining when or whether to settle or to proceed to hearing.

FINRA believes, however, that the proposed changes would result in fewer late cancellations by the parties, as the higher Late Cancellation Fee would provide parties with an incentive to consider and begin settlement negotiations earlier in the process, if such an approach is in their interests. In addition, FINRA believes that the proposed rule change could help it minimize arbitrator turnover by addressing arbitrators’ concerns that the current honoraria funded by the Late Cancellation Fee does not adequately compensate them for time spent and opportunities lost.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions

<sup>11</sup> The proposed rule change would make the calculation of deadlines consistent under the Codes. Under the Codes, “day” is defined as a calendar day, not a business day. See Rules 12100(j) and 13100(j).

<sup>12</sup> An arbitrator receives an honorarium payment for each hearing session in which the arbitrator participates. If two hearing sessions are conducted in one day, an arbitrator would receive \$300 for each session or a total of \$600 for the day. See *supra* note 7. On September 29, 2014, the SEC approved a proposal to increase the amount of honoraria paid to an arbitrator for participation in a hearing session to \$300 per session; the \$300 rate became effective on December 15, 2014 for all cases filed on or after the approval date. See Securities Exchange Act Release No. 73245 (Sept. 29, 2014), 79 FR 59876 (Oct. 3, 2014) (Order Approving File No. SR-FINRA-2014-026) (“Honoraria Increase Proposal”).

<sup>13</sup> See *Notice to Members* 04–53 (Arbitrator Hearing Adjournments), July 2004, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p006140.pdf>.

<sup>14</sup> If the parties cannot agree on the allocation, the arbitrators typically split the fee among the parties.

<sup>15</sup> See Rules 12601(a)(1) and 13601(a)(1).

<sup>16</sup> See *supra* note 12.

of Section 15A(b)(6) of the Act,<sup>17</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>18</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change appropriately allocates the proposed fee increase among those parties that cancel hearings on short notice. The Late Cancellation Fee would be paid by the parties, and passed through to the arbitrators to provide them with more compensation for preparation time expended and lost opportunities in the event of a cancellation on short notice. FINRA believes, therefore, that the proposed Late Cancellation Rule represents an equitable allocation of a reasonable fee to use the forum. While arbitrators would typically allocate the Late Cancellation Fee to the requesting party or parties, FINRA rules permit the arbitrators to allocate all, or a portion of the fee, to the non-requesting party, if the arbitrators determine that the non-requesting party caused or contributed to the late cancellation. Moreover, the Late Cancellation Fee can be avoided altogether if the parties provide ten or more calendar days advance notice of such a cancellation.

Finally, FINRA believes that the proposed rule change will protect investors and the public interest by improving FINRA's ability to retain qualified arbitrators willing to devote the time and effort necessary to consider thoroughly all arbitration issues presented, which, FINRA believes, is an essential element for FINRA to achieve its mission of investor protection and market integrity.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2015-003 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2015-003. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-FINRA-2015-003 and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2015-03660 Filed 2-23-15; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-74287; File No. SR-NYSE-2015-07]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 402.05 of the NYSE Listed Company Manual To Clarify That Listed Companies Soliciting Proxy Material Through Brokers or Other Entities Must Comply With SEC Rule 14a-13**

February 18, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 3, 2015, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>17</sup> 15 U.S.C. 78o-3(b)(6).

<sup>18</sup> 15 U.S.C. 78o-3(b)(5).

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Section 402.05 of the NYSE Listed Company Manual (the "Manual"). As amended, the rule will clarify that listed companies soliciting proxy material through brokers or other entities must comply with Rule 14a-13 ("SEC Rule 14a-13") under the Act. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The Exchange proposes to amend Section 402.05 of the Manual to clarify that listed companies soliciting proxy material through brokers or other entities must comply with SEC Rule 14a-13.

SEC Rule 14a-13 sets forth procedures that must be followed by listed companies that intend to solicit proxies from holders of shares entitled to vote at a meeting, where such shares are held of record by a broker or other entity. Specifically, Rule 14a-13 mandates that, among other things, listed companies must inquire of the record holder whether other persons are beneficial owners of the subject shares and, if so, how many copies of the relevant proxy or other soliciting materials must be provided to supply such materials to the beneficial owners. SEC Rule 14a-13 further sets forth the timeline on which inquiry of the record holder must be made.

SEC Rule 14a-13 requires listed companies to make the aforementioned inquiry at least 20 business days prior to the record date for the relevant shareholder meeting, or (i) if such

inquiry is impracticable 20 business days prior to the record date of a special meeting, as many days before the record date of such meeting as is practicable or, (ii) if consents or authorizations are solicited, and such inquiry is impracticable 20 business days before the earliest date on which they may be used to effect corporate action, as many days before that date as is practicable, or (iii) at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown.

In its current form, Section 402.05 of the Manual is intended to incorporate the requirements of SEC Rule 14a-13 with respect to the obligations of a listed company to make inquiry of brokers in advance of a shareholder meeting. Indeed, Section 402.05 makes specific reference to the Commission's rule requiring issuers to distribute broker search cards 20 business days in advance of a record date. However, Section 402.05 of the Manual in its current form also separately states that a listed company's inquiry of brokers must be made not less than 10 days in advance of a record date. The Exchange imposed this absolute 10 day minimum in recognition of the fact that the provisions of SEC Rule 14a-13 allow, in certain limited circumstances, for a listed company to inquire of brokers less than 20 days in advance of a record date for a special meeting (but not for an annual shareholders' meeting). While providing for limited exceptions to the 20-day advance inquiry requirement, SEC Rule 14a-13 does not explicitly establish an absolute minimum number of days that the inquiry must be made in advance of the record date.

Based on conversations with market participants and the SEC staff, the Exchange has become concerned that Section 402.05 of the Manual, as currently drafted, may lead to confusion with respect to what is required of listed companies making inquiry of brokers in advance of a shareholder meeting. First, despite making specific reference to the Commission's 20-day advance inquiry rule (*i.e.*, SEC Rule 14a-13), the Exchange believes Section 402.05 could be read as requiring only a 10-day advance inquiry. Second, the Exchange understands that while Rule 14a-13(a)(3)(i) and (ii) codifies two exceptions to the 20-day advance inquiry requirement, any company seeking to rely on these exceptions in the limited, if any, circumstances in which the SEC would not object is not prohibited from conducting its inquiry less than 10 days in advance of the record date. Third, the Exchange has not adopted a rule, as contemplated by Rule

14a-13(a)(3)(iii), that permits issuers to show "good cause" for why they cannot comply with Rule 14a-13's advance inquiry requirement. Accordingly, the Exchange believes that the 10-day period presently described in Section 402.05 is in conflict with the requirements of Rule 14a-13. Therefore, the Exchange proposes to revise Section 402.05 of the Manual to clarify that listed companies soliciting proxy material through brokers or other entities must comply with the provisions of SEC Rule 14a-13 and that the Exchange does not impose any additional requirements with respect to the relevant inquiry of brokers. Further, the Exchange proposes to delete the requirement in Section 402.05 of the Manual that listed companies immediately advise the Exchange if it becomes impossible for them to make an inquiry of brokers at least ten days before a record date. Given that listed companies are required to comply with SEC Rule 14a-13 and the Exchange has no authority to waive compliance with such rule, the Exchange believes that such notice requirement is unnecessary.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> in particular in that it is designed 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 Exchange believes that the proposed amendment is consistent with the investor protection objectives of Section 6(b)(5) because it eliminates potential confusion between the requirements of SEC Rule 14a-13 and Exchange rules and clarifies that SEC Rule 14a-13 is the ultimate authority with respect to requirements related to inquiry of brokers in advance of a shareholder meeting.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The proposed

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

rule change does not significantly affect competition, but rather simply seeks to align the Exchange rule with SEC Rule 14a-13 with respect to requirements related to inquiry of brokers in advance of a shareholder meeting.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup> Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act<sup>10</sup> to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>10</sup> 15 U.S.C. 78s(b)(2)(B).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2015-07 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2015-07. 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-NYSE-2015-07 and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Brent J. Fields,**

*Secretary.*

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**BILLING CODE 8011-01-P**

<sup>11</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-74299; File No. SR-NASDAQ-2014-065]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt New Rule 5713 and List Paired Class Shares Issued by AccuShares® Commodities Trust I**

February 18, 2015.

**I. Introduction**

On June 11, 2014, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to: (1) Adopt listing standards for Paired Class Shares in new Rule 5713; and (2) list and trade Paired Class Shares ("Shares") issued by AccuShares® Commodities Trust I ("Trust") relating to the following funds pursuant to new Rule 5713: (a) AccuShares S&P GSCI® Spot Fund; (b) AccuShares S&P GSCI® Agriculture and Livestock Spot Fund; (c) AccuShares S&P GSCI® Industrial Metals Spot Fund; (d) AccuShares S&P GSCI® Crude Oil Spot Fund; (e) AccuShares S&P GSCI® Brent Oil Spot Fund; (f) AccuShares S&P GSCI® Natural Gas Spot Fund; and (g) AccuShares Spot CBOE® VIX® Fund (each individually, "Fund," and, collectively, "Funds").

The proposed rule change was published for comment in the **Federal Register** on June 23, 2014.<sup>3</sup> On August 6, 2014, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> On September 18, 2014, the Commission instituted proceedings to determine whether to approve or

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 72412 (June 17, 2014), 79 FR 35610 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 72779, 79 FR 47162 (Aug. 12, 2014). The Commission designated a longer period within which to take action on the proposed rule change and designated September 19, 2014 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

disapprove the proposed rule change,<sup>6</sup> and on December 16, 2014, the Commission extended the deadline for Commission action until February 18, 2015.<sup>7</sup> The Commission received six comment letters regarding the proposal, including one from the Exchange and two from AccuShares Investment Management LLC (“Sponsor”), the sponsor of the Funds.<sup>8</sup> On February 10, 2015, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>9</sup>

This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

## II. Description of the Proposal

The Exchange proposes to adopt new Rule 5713, which permits the listing of Paired Class Shares, and to list and trade Shares of the Funds.

### A. General Description of Paired Class Shares<sup>10</sup>

Paired Class Shares will be structured with the objective of providing investors with exposure to changes in an index or other numerical variable (“Underlying Benchmark”). Paired Class Shares will be issued by a trust on behalf of a fund, and each fund will be a segregated series of that trust.<sup>11</sup> Paired Class Shares will have values that are based on an Underlying Benchmark where the value

of the underlying benchmark reflects the value of assets, prices, price volatility, or other economic interests (“Reference Asset”).<sup>12</sup>

The trust for each fund of Paired Class Shares will always issue and redeem Paired Class Shares in pairs of shares of opposing classes of each fund: Up Shares and Down Shares. The values of the opposing classes will move in opposite directions as the value of the fund’s Underlying Benchmark varies from its starting level. Up Shares will be positively linked to the fund’s Underlying Benchmark, and Down Shares will be negatively linked to the fund’s Underlying Benchmark.<sup>13</sup> The rate of linkage or leverage of a fund’s Up Shares and Down Shares performance to the performance of the fund’s referenced Underlying Benchmark will be one-to-one.<sup>14</sup> Each fund will use a mathematical formula to calculate the liquidation value attributable to each of its classes of Paired Class Shares (“Class Value”) and to each share of each class (“Class Value per Share”).<sup>15</sup>

Each fund will engage in regular distributions<sup>16</sup> and may also engage in special distributions<sup>17</sup> or corrective

distributions.<sup>18</sup> Immediately after each distribution, the fund’s Underlying Benchmark participation or exposure will be reset, and the fund’s Class Value per Share for each of its classes will be set to equal the lowest Class Value per Share of the two classes of Paired Class Shares.

Paired Class Shares of a fund will be created and redeemed in specified aggregations of equal quantities of Up Shares and Down Shares<sup>19</sup> at their respective Class Values per Share. Paired Class Shares can only be created or redeemed by authorized participants (“Authorized Participants”).<sup>20</sup> Paired Class Shares creation and redemption transactions will only occur (a) for cash consideration, and (b) in equal pre-determined quantities of Up Shares and Down Shares.

### B. The Exchange’s Description of the Funds

The Exchange has made the following representations and statements in describing, among other things, the Funds, the corresponding Underlying Benchmarks, arbitrage, and distributions.<sup>21</sup>

The Shares will be offered by the Trust, which is a Delaware statutory trust.<sup>22</sup> Wilmington Trust, N.A., a

a specified rate of change since the previous distribution. Special Distributions are designed to prevent rapid movements in the Underlying Benchmark from transferring all value in the fund either to the Up Shares or to the Down Shares. See *id.* (describing regular and special distributions to be made in the form of cash during the first six months of trading in Paired Class Shares, and thereafter, in Paired Class Shares instead of cash).

<sup>18</sup> Funds would make corrective distributions when the trading price of a class of shares deviates from its class value by a specified amount for a specified period. Corrective distributions are designed to prevent the Up Shares and Down Shares from becoming locked in a persistent state of equal and opposite deviations from class value. In a corrective distribution, a fund will issue each holder of Up Shares an equal number of Down Shares, and each holder of Down Shares an equal number of Up Shares.

<sup>19</sup> A Creation Unit for each Fund will comprise 25,000 Up Shares and 25,000 Down Shares. See *id.* at 35612, n.14.

<sup>20</sup> See *id.* at 35612.

<sup>21</sup> The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including risks, information relating to the Underlying Benchmarks and Reference Assets, Class Value and Class Value per Share calculations, creation and redemption procedures, trading halts and pauses, applicable Exchange trading rules, surveillance, information circulars, fees, disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. See Notice, *supra* note 3, and Registration Statement, *infra* note 22, respectively.

<sup>22</sup> The Exchange states that the offer and sale of Paired Class Shares of each Fund will be registered with the Commission by means of the Trust’s registration statement on Form S-1 under the Securities Act of 1933 (“Securities Act”). According

<sup>6</sup> See Securities Exchange Act Release No. 73142, 79 FR 57150 (Sept. 24, 2014) (“OIP”).

<sup>7</sup> See Securities Exchange Act Release No. 73843, 79 FR 76428 (Dec. 22, 2014).

<sup>8</sup> See Letter from Jack Fonss, CEO and Co-Founder of the Sponsor, to Kevin O’Neill, Deputy Secretary, Commission (Sept. 25, 2014) (“Sponsor Letter”); Letter from Robert E. Whaley, Valere Blair Potter Professor of Finance, Director, Financial Markets Research Center, Vanderbilt Owen Graduate School of Management, to Kevin O’Neill, Deputy Secretary, Commission (Oct. 8, 2014) (“Whaley Letter”); Letter from David B. Allen to Commission (Oct. 11, 2014) (“Allen Letter”); Letter from Mark Kassner to Commission (Oct. 13, 2014) (“Kassner Letter”); Email from Ned Cataldo, Chief Operating Officer and Co-Founder of the Sponsor, to Heather Seidel, Associate Director, Commission (Oct. 24, 2014) (“Sponsor Email”); Letter from Jurij Trypupenko, Associate General Counsel, Exchange, to Brent J. Fields, Secretary, Commission (Oct. 28, 2014) (“Exchange Letter”). All comment letters are available at: <http://www.sec.gov/comments/sr-nasdaq-2014-065/nasdaq2014065.shtml>.

<sup>9</sup> In Amendment No. 1, the Exchange (a) corrected references to the entity that will be calculating and publishing the CBOE Volatility Index®, (b) deleted Commentary .05 to Rule 5713 due to its inapplicability to Paired Class Shares, and (c) made technical re-numbering changes to Rule 5713 as a result of the deletion of Commentary .05. Amendment No. 1 provided clarification to the proposed rule change, and because it does not materially affect the substance of the proposed rule change, Amendment No. 1 is not subject to notice and comment.

<sup>10</sup> A complete description of Rule 5713 and Paired Class Shares can be found in the Notice, *supra* note 3.

<sup>11</sup> See NASDAQ Rule 5713(c).

<sup>12</sup> See *id.* The Exchange states that other economic interests would include, for example, currencies, interest rates, non-investable economic indices, and other measures of financial instrument value. See Notice, *supra* note 3, 79 FR at 35611, n.11. The Exchange will file separate proposals under Section 19(b) of the Act before listing and trading each series of Paired Class Shares. See Commentary .02 to NASDAQ Rule 5713.

<sup>13</sup> See NASDAQ Rule 5713(c).

<sup>14</sup> See Notice, *supra* note 3, 79 FR at 35611.

<sup>15</sup> See *id.* The Exchange represents that the mathematical formula is based on the following factors: (1) The value of the fund’s assets; (2) the allocation of that value based on changes in the level of the fund’s Underlying Benchmark, which may be limited, reduced, capped, or otherwise modified according to formula or pre-set parameters; and (3) the daily accrual of gain and income or loss on the assets of the fund, less the liabilities of the fund, as such gains, income losses, and liabilities are allocated to each class of the fund. See *id.* at n.12.

<sup>16</sup> On a scheduled basis, funds would make regular distributions, paying a dividend to the class of shares that had increased in value since the last distribution. According to the Exchange, regular and special distributions will be made in the form of cash during the first six months of trading in Paired Class Shares. Thereafter, each fund will pay all or any part of any regular or special distribution in Paired Class Shares instead of cash, where further cash distributions would adversely affect the liquidity of the market for the fund’s shares or impact the fund’s ability to meet minimum Exchange distribution requirements. See *id.* at 35619 (further stating that all payments made in Paired Class Shares will be made in equal numbers of Up and Down Shares, and that, to the extent a share distribution would result in the distribution of fractional Paired Class Shares, cash in an amount equal to the value of the fractional Paired Class Shares will be distributed rather than fractional Paired Class Shares).

<sup>17</sup> Funds would make special distributions when movement in the Underlying Benchmark exceeded

national banking association, will serve as the trustee (“Trustee”) and the investment advisor (“Investment Advisor”) for each Fund. The Investment Advisor, which is chosen by the Sponsor, is responsible for investing each Fund’s available cash in bills, bonds, and notes issued and guaranteed by the United States Treasury (“United States Treasury Securities”) with remaining maturities of 90 days or less (“Eligible Treasuries”) and over-night repurchase agreements collateralized by United States Treasury Securities (“Eligible Repos,” and together with cash and Eligible Treasuries, collectively, “Eligible Assets”). State Street Bank and Trust Company (“State Street”), a Massachusetts trust company, will serve as the custodian, administrator, and transfer agent (“Custodian,” “Administrator,” or “Transfer Agent”) for each Fund.<sup>23</sup>

The Underlying Benchmark of each Fund, other than the AccuShares Spot CBOE VIX Fund (“VIX Fund”), is constructed, calculated, and published by S&P® Dow Jones Indices LLC (“Index Provider”).<sup>24</sup> The CBOE Volatility Index® (“VIX”), which is the Underlying Benchmark of the VIX Fund, is calculated and published by CBOE. According to the Exchange, both the Index Provider and CBOE are unaffiliated with the Trust and the Sponsor.<sup>25</sup> To the extent that an Underlying Benchmark is maintained by a broker-dealer or investment advisor, such broker-dealer or investment

advisor will erect a “firewall” around personnel who have access to information concerning changes and adjustments to the Underlying Benchmark.<sup>26</sup>

As described above, the Trust will issue Shares on behalf of each Fund in offsetting pairs, where one constituent of the pair, the Up Shares, is positively linked to the Fund’s Underlying Benchmark, and the other constituent, the Down Shares, is negatively linked to the Fund’s Underlying Benchmark. Once created, a Fund’s Paired Class Shares will trade independently of each other on the Exchange. The cash proceeds from the creation of Paired Class Shares may be held by a Fund only in Eligible Assets designed to preserve capital while earning an investment return that is consistent with the preservation of capital. Upon any redemption of a Fund’s Creation Units by an Authorized Participant, the cash of the Fund will be used to pay the proceeds of the redemption to the redeeming Authorized Participant.

Each Fund engaging in a regular distribution,<sup>27</sup> a special distribution,<sup>28</sup> a corrective distribution,<sup>29</sup> or a net income distribution<sup>30</sup> will provide at least three business days’ advance notice (or longer advance notice as may be required by the Exchange)<sup>31</sup> of such an event. Each Fund engaging in a share split<sup>32</sup> will provide at least ten calendar days’ advance notice (or longer advance notice as may be required by the Exchange) of such an event. In each instance, the Sponsor will notify the Exchange, and post a notice of such event and its details on the Sponsor’s Web site ([www.AccuShares.com](http://www.AccuShares.com)). For regular distributions that occur on schedule, the Sponsor will cause a press release to be issued identifying the receiving class, the amount of cash, the amount of Paired Class Shares (if any), and any other information the Sponsor deems relevant regarding the distribution and will post this

information on the Sponsor’s Web site. With respect to special distributions, corrective distributions, and share splits, the information provided will include the relevant ex-, record, and payment dates for each such event and relevant data concerning each such event. These events will also be reported in press releases, on the Sponsor’s Web site, and in current reports on Form 8–K as material events, as well as in the Fund’s periodic reports.

### C. Summary of the Comments

In the OIP, the Commission posed questions regarding the proposed rule change. Commenters responded to those questions and offered other comments as well. The comments are summarized below.

#### 1. The Effect of the Distributions on the Premiums and Discounts Between the Trading Price and Class Value per Share

In response to Commission questions about the effect of the Funds’ distributions on premiums and discounts,<sup>33</sup> the Sponsor asserts that the presence of regular, special, and corrective distributions will aid in the reduction of premiums and discounts.<sup>34</sup> With regard to both regular and special distributions, the Sponsor asserts that a Fund will make these types of distributions based on the movement of the Underlying Benchmark since the last distribution date, and will then reset the index to the current market level.<sup>35</sup> According to the Sponsor, two positive effects relating to potential discounts or premiums from regular and special distributions are: (1) An investor will enjoy an actual distribution relating to the index move rather than having to rely on trading out of an intrinsic gain that could be subject to market lags, frictions, or a lack of realizable trading price responsiveness; and (2) the index reset will re-equate the intrinsic share prices, having the effect of further highlighting any deviations between trading prices and Class Values, and consequently all investors (not just market professionals) will more clearly observe any premium or discount, and

to the Exchange, the Registration Statement was filed on March 18, 2014 and will be effective as of the date of such offer and sale. See Notice, *supra* note 3, 79 FR at 35615. The Commission notes that a pre-effective amendment No. 1 to the registration statement (“Registration Statement”) was filed on July 17, 2014 (File No. 333–194666).

<sup>23</sup> The Custodian will hold each Fund’s securities and cash and will perform each Fund’s Class Value and Class Value per Share calculations. As Administrator, State Street will, among other things, perform or supervise the performance of services necessary for the operation and administration of the Funds (other than making investment decisions or providing services provided by other service providers), including accounting and other fund administrative services. As Transfer Agent, State Street will, among other things, provide transfer agent services with respect to the creation and redemption of Creation Units. The Transfer Agent will receive from Authorized Participants creation and redemption orders and deliver acceptances and rejections of such orders to Authorized Participants as well as coordinate the transmission of such orders and instructions among the Sponsor and the Authorized Participants.

<sup>24</sup> The Underlying Benchmarks for all of the Funds other than the VIX Fund are: (1) The S&P GSCI Spot index; (2) the S&P GSCI Agricultural and Livestock Spot index; (3) the S&P GSCI Industrial Metals Spot index; (4) the S&P GSCI Crude Oil Spot index; (5) the S&P GSCI Brent Crude Oil Spot index; and (6) the S&P GSCI Natural Gas Spot index, (collectively, “S&P GSCI Commodity Indices”).

<sup>25</sup> See Notice, *supra* note 3, 79 FR at 35615.

<sup>26</sup> See *id.*

<sup>27</sup> See *supra* note 16.

<sup>28</sup> See *supra* note 17.

<sup>29</sup> See *supra* note 18.

<sup>30</sup> In a net income distribution, cash is distributed to investors based on income (after expenses) from the financial instruments held by the Fund.

<sup>31</sup> The Exchange states that it may determine that a longer notice is advisable in certain circumstances (e.g., an extended, or unexpected, market break).

<sup>32</sup> Reverse share splits will be declared to maintain a positive Class Value per Share for either the Up Shares or the Down Shares of an AccuShares Fund should the Class Value per Share of either class approach zero. Reverse share splits are expected to occur in the context of special distributions and are expected to be triggered after Class Value per Share declines below a specified dollar threshold as set forth in the applicable Fund prospectus.

<sup>33</sup> See OIP, *supra* note 6, 79 FR at 57157.

<sup>34</sup> See Sponsor Letter, *supra* note 8, at 4. Similarly, the Exchange states that the corrective distribution feature is designed to prevent losses that have occurred in other ETPs in the past. See Exchange Letter, *supra* note 8, at 22–23. See also Notice, *supra* note 3, 79 FR at 35611 (“Immediately after each regular, special and corrective distribution, the Fund’s Underlying Benchmark participation or exposure will be reset and the Fund’s Class Value per Share for each of its classes will be set to equal the lowest Class Value per Share of the two classes of Paired Class Shares.”).

<sup>35</sup> See Sponsor Letter, *supra* note 8, at 4.

any investor can execute a trade in response to these deviations.<sup>36</sup>

The Sponsor states its view that almost all premium and discount combinations of the Up Shares and Down Shares of a Fund will be readily cured by conventional arbitrage. According to the Sponsor, the corrective distribution is an investor safety feature, above and beyond conventional arbitrage, designed to remedy those unique scenarios where the material discount amount of one Fund share is exactly equal to the material premium amount of the opposing share.<sup>37</sup>

The Sponsor states that the corrective distribution<sup>38</sup> is expected to have both a preventative effect and a curative effect relating to premiums and discounts between trading prices and Class Values per Share.<sup>39</sup> The Sponsor asserts that the possibility of a corrective distribution will disincentivize market participants from buying or selling shares at material premiums or discounts to the Class Values per Share.<sup>40</sup> Relating to the curative impact, the Sponsor states that following the corrective distribution: (1) The discount class holder, potentially stranded by low available bid prices, would have the correct aggregate value (inclusive of index movements) in a 50/50 position in the discount shares and premium shares; and (2) a premium class holder would also have the correct aggregate value (inclusive of index movements) in a 50/50 position in discount shares and premium shares.<sup>41</sup> The Sponsor asserts that these positions would be unaffected by a single share class premium or discount, and would be readily saleable at a stable and readily identifiable price (especially because the Fund is limited to holding cash equivalents).<sup>42</sup> Authorized Participants, the Sponsor notes, may redeem these positions in sufficient aggregate amount.<sup>43</sup>

One commenter, who recommends that the Commission approve the proposed rule change, asserts that the regular, special, and corrective distributions will help prevent the significant premiums and discounts that

have occurred in other ETPs in recent years.<sup>44</sup>

Another commenter expressed concern that the structure of Paired Class Shares will result in persistent premiums and discounts that will fundamentally invalidate the premise of the products in the market, making them misleading to investors.<sup>45</sup> This commenter asserts that the arbitrage mechanism will not work to keep each of the products trading closely to its intrinsic value; instead, the commenter argues that the arbitrage mechanisms will, in theory, keep the sum of the discount on one class and the premium on the other at zero. The commenter states its view that it is not economically possible to maintain intrinsic value in the secondary market, and predicts that any attempt to do so will lead to massive speculation in the products until they are pushed to a breaking point, at which point less-sophisticated investors will suffer significant losses.<sup>46</sup> To support these conclusions, the opposing commenter provides a number of hypothetical situations involving the trading relationship between the VIX index, VIX futures, and the proposed VIX Fund.<sup>47</sup> According to the commenter, the core of the issue is that the products are simply not hedgeable.<sup>48</sup> The commenter predicts that there will be very significant arbitrage pressures attempting to exploit the “economic perversity of the products” and significant activity around prices that reflect a corrective distribution.<sup>49</sup>

The Exchange asserted that underlying the opposing commenter’s arguments regarding ineffective arbitrage is the misunderstanding that spot levels and futures levels are equivalent and interchangeable.<sup>50</sup> The Exchange agrees that global markets will be broadly inter-related, including spot markets, futures markets, stock markets, and bond markets, but argues that, in the case of volatility, and VIX in particular, the spot market is not “in line” and directly comparable with VIX futures prices.<sup>51</sup> To support this

assertion, the Exchange cites guidance from the CBOE VIX Primer Basics on the educational section of CBOE’s Web site.<sup>52</sup> Additionally, the Exchange states that, contrary to the assumptions implicit in the opposing commenter’s numerical examples, the Fund’s creations, redemptions, and other operations are not limited by VIX futures expiration dates.<sup>53</sup> The Exchange asserts that, uniquely, the intrinsic Class Values of the Funds are not dependent upon successful trading, rolling, or otherwise rebalancing of securities or futures contracts.<sup>54</sup>

The Exchange also asserts that one part of the arbitrage process for Paired Class Shares will operate the same way as it does for all exchange-traded funds (“ETFs”); namely, a share trading above or below an intrinsic Class Value can be transacted, hedged, and traded. Paired Class Shares have an additional arbitrage mechanism, according to the Exchange: Intra-fund arbitrage—through the valuation and trading of both Up and Down Shares—limits the discounts, premiums, or any combination thereof of the share classes to a value indicated by the readily determinable net asset value of the Fund’s cash equivalent assets.<sup>55</sup> The Exchange argues that arbitrage opportunities are uniquely easy to identify because of the direct observability of the Underlying Benchmark, the direct linkage of the intrinsic Class Values to the Underlying Benchmark, and the simplicity and very limited number of the moving parts in a creation or redemption—*i.e.*, the two Fund Share prices versus the readily determinable value of the Fund’s cash equivalent assets.<sup>56</sup>

## 2. The Ability of Investors To Understand the Operation of the Funds

The Sponsor asserts that retail investors and other market participants will be able to understand the Fund’s redemption mechanics and the types and timing of distributions.<sup>57</sup> Generally, the Sponsor states that the Funds’ distributions are limited to scheduled dates or the occurrence of large and rare underlying index moves.<sup>58</sup> The Sponsor asserts that movements of the underlying indexes will be easy to track using public sources and therefore

overlying both the spot VIX and VIX futures demonstrates that the market understands the differences between spot VIX and the range of VIX futures prices. *See id.* at 19.

<sup>36</sup> *See id.*

<sup>37</sup> *See id.*

<sup>38</sup> A corrective distribution will result in: (1) The investors holding the share class associated with the favorable index move to realize a gain equal to the realized move in the index; and (2) all investors receiving an equal quantity of each share class of a Fund. *See id.* at 5.

<sup>39</sup> *See id.* at 4.

<sup>40</sup> *See id.*

<sup>41</sup> *See id.* at 5.

<sup>42</sup> *See id.*

<sup>43</sup> *See id.*

<sup>44</sup> *See* Whaley Letter, *supra* note 8, at 1–2.

<sup>45</sup> *See* Kassner Letter, *supra* note 8, at 1.

<sup>46</sup> *See id.* This commenter further states that, while his assertions regarding the possibility of persistent premiums and discounts and the potential failure of an effective arbitrage mechanism for Paired Class Shares focus on the proposed VIX Fund and VIX futures, the commenter points out that the same economic principles apply to any futures. *See id.*

<sup>47</sup> *See id.* at 1–3.

<sup>48</sup> *See id.* at 2.

<sup>49</sup> *See id.*

<sup>50</sup> *See* Exchange Letter, *supra* note 8, at 17.

<sup>51</sup> *See id.* at 18. The Exchange asserts that the willingness of market participants to trade options

<sup>52</sup> *See id.* at 18.

<sup>53</sup> *See id.* at 16, n.28, 18.

<sup>54</sup> *See id.* at 17.

<sup>55</sup> *See id.*

<sup>56</sup> *See id.*

<sup>57</sup> *See* Sponsor Letter, *supra* note 8, at 6.

<sup>58</sup> *See id.* at 2.

concludes that investors will have the information necessary to transact in the Shares and respond to distributions.<sup>59</sup> In addition, the Sponsor represents that the consensus of qualified investors and market makers is that the frequency of the Funds' distributions is consistent with customary review (e.g., monitoring prices and returns) and customary reevaluation of share positions.<sup>60</sup>

The Sponsor states that the prospectus contains detailed examples, and the Funds' Web site will contain infographics describing each distribution as well as the courses of action available to investors.<sup>61</sup> The Sponsor also states that, except in limited and unanticipated conditions (listed in the prospectus), regular and special distributions will be made to shareholders in cash, and therefore investors will generally be making a straightforward decision with respect to deploying or maintaining received cash.<sup>62</sup> With respect to corrective distributions, the Sponsor states that they are a direct response to retail investor experiences in ETPs where obscure technical forces or market illiquidity have caused both large premiums and large discounts to persist.<sup>63</sup> The Sponsor asserts that these distributions, as a self-policing and self-corrections measure, are an alternative to real-time estimates of indicative portfolio values, which investors may not necessarily consider before transacting in ETP shares.<sup>64</sup>

The Sponsor also states that: (1) Corrective distributions are expected to be rare; (2) without them, retail investors otherwise may be exposed to either paying a material premium relating to a purchase or suffering a material discount relating to a sale of Shares; (3) before receipt of a distribution, investors will see a Form 8-K, a notice from the Exchange, and a notice on the Fund's Web site; and (4) upon receipt of a corrective distribution, investors may take any of the following actions, all of which the Sponsor asserts are not materially different from the options available to investors upon the receipt of cash or shares from any distribution or traditional corporate action: (a) Sell their entire positions for cash, (b) sell a portion of their positions for cash for a modulated exposure to the

Fund index, or (c) sell part of a position and reinvest proceeds to maximize a particular market exposure.<sup>65</sup> According to the Sponsor, prospective investors view the corrective distribution feature as an effective balance of "newness" and "benefit" for the entire range of Fund shareholders.<sup>66</sup> The Sponsor states that the corrective distribution is expected to encourage more active and accurate market making and more liquidity-enhancing position-taking by Authorized Participants, all of which are more likely to actually reduce the likelihood and occurrences of a corrective distribution declaration.<sup>67</sup>

The opposing commenter asserts that, because of the persistent premiums and discounts he predicts, investors would have to be extremely diligent in tracking their positions because the Up Shares might frequently turn into both Up Shares and Down Shares, which would result in inattentive investors paying fees to the issuer but not receiving any notional exposure whatsoever.<sup>68</sup> According to the commenter, an investor in the Shares would require extensive knowledge of the financial markets to understand why, when being required to re-enter the market after a distribution to reestablish a position, the product could be trading already at a significant premium or discount.<sup>69</sup> The commenter also states its view that the investor would have to have intimate knowledge of the VIX futures market to understand from where the premium or discount was actually derived.<sup>70</sup> The opposing commenter states that investors would likely receive Shares with the opposite economics for some distributions, and predicts that this would confuse them.<sup>71</sup> The commenter distinguishes regular share distributions, with which the commenter concedes investors are familiar, by stating that Share distributions would include Shares with the opposite economics and different tickers.<sup>72</sup> Further, the opposing commenter asserts that, unlike products that trade at or close to their intrinsic

value, an investor in Shares needs to know a considerable amount of information at every point in time when investing in the product, including for example the coefficient of variation and the number of days there has been a premium or discount (in light of the corrective distribution threshold).<sup>73</sup> The opposing commenter also asserts that the investor also must check his or her account every day, to see if there has been a Special Distribution, and on every Distribution Date, to see what is in his or her account (i.e., whether there is cash or a neutral basket, which may be subject to fees).<sup>74</sup>

### 3. The Ability of Investors To Understand the Funds' "Resets" to the Then-Current Reference Index Value

The Sponsor states its view that the Funds are similar to comparable ETPs in the market and that, accordingly, it expects that both retail investors and other market participants will understand the effect of resets (which will occur when regular, special, or corrective distributions are made) on their investments in a Fund.<sup>75</sup> The Sponsor states that in other comparable ETFs and exchange-traded notes ("ETNs") the impact of resetting comes through the re-trading of futures, options, or other contracts either daily, monthly, or on another cycle, and that this conventional resetting has transaction costs that are often difficult to isolate within the context of overall fund performance.<sup>76</sup> Additionally, according to the Sponsor, because the traditional method of resetting is accomplished through the trading of underlying positions at telegraphed times under prescribed fund rules, ETFs and ETNs can be disadvantaged from having to be a "price taker" in possibly adverse or challenging markets.<sup>77</sup> The Sponsor states that the Funds' resets allow the Funds to reduce their transaction expenses and eliminate the need to transact in underlying positions. The Sponsor also asserts that individual investors will be able to more easily track and monitor the resets of the Funds than the resetting impact in conventional funds.<sup>78</sup>

A supporting commenter asserts that the Funds would deliver exact holding period returns, which he contrasts to the returns of levered and inverse funds that implicitly rebalance daily and which he

<sup>59</sup> See *id.*

<sup>60</sup> See *id.* The Sponsor states that its opinions and views expressed in the Sponsor Letter were informed by conversations with the Exchange, prospective authorized participants, other market makers, traders, and qualified investors. See *id.*

<sup>61</sup> See *id.* at 6.

<sup>62</sup> See *id.*

<sup>63</sup> See *id.*

<sup>64</sup> See *id.*

<sup>65</sup> See *id.* at 6-7.

<sup>66</sup> Specifically, the Sponsor states that, while prospective participants with expertise in retail investing believed the corrective distribution feature to be engineered solely for the benefit of the retail investor and questioned whether institutional traders would lose profitable trading opportunities, market makers (including Authorized Participants) applauded the addition of a corrective distribution. See *id.* at 7. See *supra* note 60 (regarding with whom the Sponsor consulted).

<sup>67</sup> See *id.*

<sup>68</sup> See Kassner Letter, *supra* note 8, at 3.

<sup>69</sup> See *id.*

<sup>70</sup> See *id.*

<sup>71</sup> See *id.*

<sup>72</sup> See *id.*

<sup>73</sup> See *id.* at 4.

<sup>74</sup> See *id.*

<sup>75</sup> See *id.* at 7.

<sup>76</sup> See *id.*

<sup>77</sup> See *id.* at 7-8.

<sup>78</sup> See *id.* at 8.



asserts can be a source of confusion for retail customers.<sup>79</sup>

#### 4. The Adequacy of the Exchange's Suitability Rules

The Sponsor states its view that the Exchange's rules governing sales practices adequately ensure the suitability of recommendations regarding the Shares and that enhancement is unnecessary.<sup>80</sup> The Sponsor states that NASDAQ Rule 2111A requires that an exchange member have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the exchange member to ascertain the customer's investment profile.<sup>81</sup> According to the Sponsor, a customer's investment profile would, in general, include the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance.<sup>82</sup> The Sponsor also states that the rule explicitly covers recommended investment strategies involving securities, including recommendations to "hold" securities.<sup>83</sup>

The Sponsor also discusses the Exchange's information circular. Prior to the commencement of trading of Fund shares, the Exchange will inform its members through an information circular of the suitability requirements of NASDAQ Rule 2111A. Specifically the information circular will remind members that, in recommending transactions in Shares, they must: (1) Have a reasonable basis to believe that (a) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (b) the customer can evaluate the special characteristics and is able to bear the financial risks of an investment in the shares; and (2) make reasonable efforts to obtain the following information: (a) The customer's age; (b) the customer's other investments; (c) the customer's financial situation and needs; (d) the customer's tax status; (e) the customer's investment objectives, experience, time horizon, liquidity needs and risk tolerance; and (f) such other information used or

considered to be reasonable by such members or registered representatives in making recommendations to the customer.<sup>84</sup>

#### 5. The Relationship Between the Funds' Holdings and Their Investment Objective

The Sponsor states its view that investors will understand that the Funds hold cash and cash equivalent securities, and the Cash Values per Share will be directly responsive to changes in the underlying index.<sup>85</sup> The Sponsor asserts that ETNs are similar to the Shares in that an ETN does not have identified "portfolio assets" and that this aspect of ETNs has been well understood.<sup>86</sup>

The Sponsor asserts that the Funds' structure is appropriate, and will result in certain advantages: (1) Lower fund operating costs, because the Class Value per Share amounts are directly related to an independent and readily observable index and there is no need for a Fund to incur trading costs over assets in an effort to track the index; (2) improved fund performance transparency, because the return of Shareholders will not be impacted by transactions costs that are difficult to observe and underlying assets whose pricing is opaque; (3) a higher certainty of redemption values because the Shares will be readily created and redeemed at a certain and readily determinable value, thereby eliminating the frictions often caused where (a) a potentially large number of in-kind securities are challenging to value or (b) a cash creation or redemption is based on trading illiquid securities or trading securities in a fast-moving market; and (4) direct indexing, which the Sponsor states prospective investors believe to be more easily followed through readily observable and free data services.<sup>87</sup>

#### 6. Other Comments

One commenter recommends that the Commission approve the proposed rule change because, in its view, the AccuShares' products are simple and transparent, and will provide investors, institutions and retail customers alike

with the returns that they want.<sup>88</sup> He also recommends approval of the proposed rule change because: (1) The Shares would provide exposure to spot market benchmarks that are popular to large segments of the asset management community; (2) the Up Shares and Down Shares are direct investments that track readily-observable spot market benchmarks, unlike the futures indexes, which he characterizes as complicated dynamic futures trading strategies; (3) changes in the values of the Up Shares and Down Shares would be purely mechanical and would correspond directly to the price changes in the underlying index, which is distinctly different from many current products; (4) unlike ETNs, investors in the Funds would have no credit risk; and (5) actively-managed products add market complexity, and the Paired Class Shares would not be actively-managed.<sup>89</sup>

Similarly, another commenter asserts that the Funds would be both highly relevant to a wide range of investors and highly approachable to all of them.<sup>90</sup> He asserts that indexes underlying the Funds are arguably better for individual investors because they are easier to follow than the indexes that underlie some existing products.<sup>91</sup> This commenter also asserts that the market has been clamoring for better spot market proxies since the beginning of the ETF market.<sup>92</sup> Further, the commenter recommends approval of the proposed rule change because the "best ETFs also help solve existing structural problems for traders and investors regarding term structure of price and/or volatility, beta to cash prices and tracking errors, and rebalancing inefficiencies . . ."<sup>93</sup>

The opposing commenter asserts that the premiums and discounts, which he predicts will result in corrective distributions that are more frequent than the Exchange has suggested, will result in high implicit fees and large tracking

<sup>79</sup> See Whaley Letter, *supra* note 8, at 2.

<sup>80</sup> See Sponsor Letter, *supra* note 8, at 8, 9.

<sup>81</sup> See *id.* at 8.

<sup>82</sup> See *id.*

<sup>83</sup> See *id.*

<sup>84</sup> See *id.* at 8–9. In its comment letter, the Exchange repeated the Sponsor's statements regarding the Exchange's rules and information circular. See *id.* at 13–14.

<sup>85</sup> See *id.* at 9.

<sup>86</sup> See *id.* The Sponsor, however, distinguishes the Shares from ETNs in that, with ETNs, an investor is subject to the performance risk of the obligor and a market maker is subject to ETN creation and redemptions processes which are sometimes less standardized than ETF processes. See *id.* at 10.

<sup>87</sup> See *id.* at 9–10.

<sup>88</sup> See Whaley Letter, *supra* note 8, at 2.

<sup>89</sup> See *id.* at 1–2.

<sup>90</sup> See Allen Letter, *supra* note 8.

<sup>91</sup> See *id.*

<sup>92</sup> See *id.*

<sup>93</sup> *Id.*

errors.<sup>94</sup> He argues that the products are not suitable for any investor.<sup>95</sup>

In response, the Exchange asserts that the Daily Amount is not a charge, fee, or amount that leaves the Fund, but rather is an amount applied to both share classes.<sup>96</sup> The Exchange characterizes the Daily Amount as “one of the unique structural features of the Funds which leads to complete transparency of intrinsic Class Value entitlements.”<sup>97</sup>

### III. Discussion and Commission’s Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>98</sup> In particular, and as discussed further below, the Commission finds that the proposed rule change is consistent with: (1) The requirements of Section 6(b)(5) of the Act,<sup>99</sup> which requires, among other things, that the Exchange’s rules be designed 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; and (2) Section 11A(a)(1)(C)(iii) of the Act,<sup>100</sup> which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

<sup>94</sup> See Kassner Letter, *supra* note 8, at 3. For example, the commenter characterizes the “Daily Amount” as a fee. During any single distribution measurement period that starts with the prior distribution date and to create a balanced market for the Up Shares and Down Shares of the VIX Fund, the Class Value per Share of each Up Share of the VIX Fund will be reduced and the Class Value per Share of each Down Share of the VIX Fund will be increased by an additional daily amount, the “Daily Amount.” See Notice, *supra* note 3, 79 FR at 35617. The opposing commenter asserts that the investors in the Up Shares of the VIX Fund will be charged will be charged 4.5% in Daily Amount charges.

<sup>95</sup> See Kassner Letter, *supra* note 8, at 3.

<sup>96</sup> See Exchange Letter, *supra* note 8, at 19.

<sup>97</sup> *Id.* at 22.

<sup>98</sup> 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).

<sup>99</sup> 15 U.S.C. 78f(b)(5).

<sup>100</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

#### A. NASDAQ Rule 5713

NASDAQ Rule 5713 sets forth provisions regarding the listing and trading of Paired Class Shares on the Exchange. The rule defines Paired Class Shares,<sup>101</sup> establishes specific recordkeeping and reporting requirements for registered market makers in Paired Class Shares,<sup>102</sup> and sets forth initial and continued listing criteria, some of which are more fully discussed below.<sup>103</sup> In addition, Commentary .05 to Nasdaq Rule 5713

<sup>101</sup> See NASDAQ Rule 5713(c). The operation of Paired Class Shares is described above. See *supra* section II.A.

<sup>102</sup> In accordance with NASDAQ Rule 5713(h), market makers in Paired Class Shares must file with the Exchange and keep current a list identifying all accounts for trading in the applicable securities or physical commodities included in, or options, futures or options on futures on, the Reference Asset of the Underlying Benchmark of any Paired Class Shares or any other derivatives based on such Reference Asset or based on any security or Reference Asset included in the Underlying Benchmark, which the registered market maker may have or over which it may exercise investment discretion. In addition, market makers are prohibited from trading in the applicable securities or physical commodities included in, or options, futures or options on futures on, the Reference Asset of the Underlying Benchmark of any Paired Class Shares or any other derivatives based on such Reference Asset or based on any security or Reference Asset included in the Underlying Benchmark, in an account in which a market maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof. See NASDAQ Rule 5713(h)(i). In addition, market makers in Paired Class Shares are required to make available to the Exchange any and all books, records, or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the applicable securities or physical commodities included in, or options, futures or options on futures on, the Reference Asset of the Underlying Benchmark of any Paired Class Shares or any other derivatives based on such Reference Asset or based on any security or Reference Asset included in the Underlying Benchmark, as may be requested by the Exchange. See NASDAQ Rule 5713(h)(ii).

<sup>103</sup> The Commission notes that any securities listed in the future under NASDAQ Rule 5713 must be the subject of a rule filing by the Exchange under Section 19(b) of the Exchange Act—providing the Commission with the opportunity to review and to approve or disapprove that rule filing—and that all securities listed under NASDAQ Rule 5713 will be subject to the full set of bylaws and other rules and procedures of the Exchange. While Nasdaq Rule 5713(e) provides that Paired Class Shares may have values based on assets, prices, price volatility, or other economic interests, such as currencies, interest rates, non-investable economic indices, and other measures of financial instrument value, the specific products approved for listing pursuant to this order will have values based on price volatility and commodity indices. The Commission staff will consider any future proposals to list products under Nasdaq Rule 5713 with values based on these and other types of benchmarks and reference assets, evaluating the specific facts and circumstances associated with each proposal under Section 19(b) of the Exchange Act. Further, the Commission staff will continue to analyze the development of exchange-traded products and their impact on market structure and will monitor the development of the market for Paired Class Shares.

states that the Exchange will implement written surveillance procedures for trading Paired Class Shares.<sup>104</sup>

Pursuant to NASDAQ Rule 5713(f)(i)(B), the Exchange will obtain a representation from the Trust on behalf of each Fund that the Class Value per Share of each of its Up Shares and Down Shares will be calculated daily and that these Class Values per Share and information about the assets of the Fund will be made available to all market participants at the same time.<sup>105</sup> NASDAQ Rule 5713(f)(ii)(B) permits the Exchange to suspend trading in or remove from listing Paired Class Shares whose Underlying Benchmark, or a substitute or replacement Underlying Benchmark based on the same Reference Asset,<sup>106</sup> is no longer calculated or available on at least a 15-second delayed basis during the Regular Market Session from a major market data vendor unaffiliated with the sponsor, the custodian, the trustee of the Trust, the Fund, or NASDAQ. Further, NASDAQ Rule 5713(f)(ii)(C) permits the Exchange to suspend trading in or remove from

<sup>104</sup> The Exchange stated that trading in Paired Class Shares will be subject to the existing trading surveillances, administered by both the Exchange and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. See Notice, *supra* note 3, 79 FR at 35621. FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, and the Exchange is responsible for FINRA’s performance under this regulatory services agreement. See Notice, *supra* note 3, 79 FR at 35621, n.51. The Exchange represented that FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Paired Class Shares and in the securities in which the Fund will invest with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement. See Notice, *supra* note 3, 79 FR at 35621. For a list of the current members of ISG, see <http://www.isgportal.org/>.

<sup>105</sup> The Commission notes that these requirements are substantively identical to provisions applicable to other exchange-traded derivative securities products, including Managed Fund Shares under NASDAQ Rule 5735(d)(1)(B). See Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039) (approving NASDAQ listing standards applicable to Managed Fund Shares). For a specific product approved for listing under NASDAQ Rule 5735, see Securities Exchange Act Release No. 73480 (October 31, 2014), 79 FR 66022 (November 6, 2014) (SR–NASDAQ–2014–090) (approving the listing and trading of Shares of the Validea Market Legends ETF under NASDAQ Rule 5735).

<sup>106</sup> Commentary .04 to Rule 5713 states that, prior to a substitute or replacement Underlying Benchmark being selected for the Fund, NASDAQ must file a related proposed rule change pursuant to Rule 19b–4 under the Exchange Act to continue trading the Paired Class Shares.

listing Paired Class Shares whose Class Value per Share becomes no longer available on a daily basis to all market participants at the same time. NASDAQ Rule 5713(f)(ii)(D) permits the Exchange to suspend trading in or remove from listing Paired Class Shares whose Intraday Indicative Value is no longer made available on at least a 15-second delayed basis by a major market vendor during the Exchange's Regular Market Session. The Commission also notes that NASDAQ Rules 5713(f)(i)(C) and 5713(f)(ii)(E) require the establishment of information barriers concerning changes and adjustments to the Underlying Benchmark.<sup>107</sup>

Based on the foregoing, the Commission believes that the requirements of NASDAQ Rule 5713, taken together with other NASDAQ Rules regarding the trading of equity securities on the Exchange, are consistent with the requirement of Section 6(b)(5) of the Act that requires that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to promote just and equitable principles of trade and to protect investors and the public interest.

#### B. Issues Raised by the Opposing Commenter

##### 1. Effectiveness of Arbitrage

In the OIP, the Commission asked for commenters' views on the effect that Paired Class Share distributions would have on premiums and discounts between the trading price of the Paired Class Shares and their respective Class Value per Share.<sup>108</sup>

The opposing commenter asserts that the structure of Paired Class Shares will result in significant and persistent premiums and discounts because "it is not economically possible to construct a two sided market for spot exposure that does not trade in line with VIX futures prices."<sup>109</sup> This commenter argues that the arbitrage mechanism of the Funds will not work to keep Up Shares and Down Shares trading close to their intrinsic value, but will instead "in theory keep the sum of the premium on one and the discount on the other at zero."<sup>110</sup> To support these conclusions, the opposing commenter provides a number of hypothetical situations

involving the trading relationship between the VIX index, VIX futures, and the proposed VIX Fund.<sup>111</sup> Further, the opposing commenter argues that the "daily amount" applied to the VIX Fund—a 15 basis point amount transferred from Up Shares to Down Shares when the VIX is at 30 or below—means that investors in Up Shares will suffer a 4.5% loss over a 30-day period, even if the VIX does not move.<sup>112</sup> The opposing commenter also argues that, because the arbitrage mechanism will not work as described by the Exchange, multiple corrective distributions will be required per year, causing investors to incur reinvestment expenses to maintain their desired position.<sup>113</sup>

The Exchange argues in response that, underlying this commenter's argument is a mistaken assumption that spot levels and futures levels are equivalent and interchangeable.<sup>114</sup> The Exchange agrees that markets such as spot markets, futures markets, stock markets, and bond markets will be broadly inter-related, but argues that, in the case of volatility in general and VIX in particular, the spot market is not "in line" and directly comparable with VIX futures prices. The Exchange cites the willingness of market participants to trade options overlying both the spot VIX and VIX futures as evidence that the market would understand the differences between spot VIX and the range of VIX futures prices. The Exchange notes that the Web site of CBOE, the provider of the VIX, states, "The price of a VIX futures contract can be lower, equal to or higher in the 30-day forward period covered by the VIX futures contract than in the 30-day spot period covered by VIX."<sup>115</sup> The Exchange also notes that, unlike VIX futures, "because the shares of the Fund are both available for creation and redemption daily, the Fund provides for spot VIX positions to be created or redeemed daily, and for returns to be realized on a daily basis."<sup>116</sup>

Additionally, the Exchange argues that the existence of the Daily Amount applied to the VIX Fund is disclosed clearly and referenced more than 90 times in the prospectus for the VIX Fund, and the Exchange argues that the amount of the Daily Amount is closely aligned with the estimates of several market experts as to the roll cost incurred by long positions in volatility

futures (e.g., VIX futures).<sup>117</sup> As a result, the Exchange argues, the expected premiums and discounts encountered by the VIX Fund should be substantially less than the opposing commenter predicts.<sup>118</sup> The Exchange also argues that the corrective distribution mechanism is designed to prevent the type of investor losses that occurred when an ETN designed to track the VIX moved substantially away from the value of the VIX.<sup>119</sup>

The Commission believes that the Exchange has met its burden to demonstrate that its proposal is consistent with the Act. The Exchange has reasonably explained in the Notice, the Exchange's response letter,<sup>120</sup> and, as to the VIX Fund, in the Registration Statement for the VIX Fund,<sup>121</sup> the methodology for the calculation of the Underlying Benchmarks and the differences between the value of the Underlying Benchmark indexes and the prices of the relevant near-month futures contracts. In particular the Exchange explains that, with respect to the VIX Fund, the purpose and derivation of the 0.15% Daily Amount by which the Up Shares will be reduced and the Down Shares increased, which, as cited by the Exchange, is consistent with price patterns historically observed when comparing VIX futures and spot prices.<sup>122</sup> The Exchange further notes the extent to which the Registration Statement discloses the Daily Amount transfer.<sup>123</sup> The Exchange has also reasonably explained the operation of the Funds; the creation and redemption process and procedures; the regular, special, and corrective distributions to be employed by the Funds; and the resulting resetting process.

In addition, with respect to arbitrage in Fund Shares, and, consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>124</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, the Commission notes that market information regarding the value of the Shares and of the Underlying Benchmarks will be continuously available to market participants.

<sup>107</sup> The Commission notes that these provisions are substantively identical to the firewall requirements in NASDAQ Rule 5705(b)(2)(B)(i), which governs the listing and trading of Index Fund Shares.

<sup>108</sup> See OIP, *supra* note 6, 79 FR at 57157.

<sup>109</sup> Kassner Letter, *supra* note 8, at 1. See also *supra* notes 45–48 and accompanying text.

<sup>110</sup> *Id.*

<sup>111</sup> See Kassner Letter, *supra* note 8.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 2–3.

<sup>114</sup> See Exchange Letter, *supra* note 8, at 17.

<sup>115</sup> *Id.* at 18.

<sup>116</sup> *Id.* at 21.

<sup>117</sup> See *id.* at 20–21.

<sup>118</sup> See *id.* at 21.

<sup>119</sup> See *id.* at 22–23.

<sup>120</sup> See Exchange Letter, *supra* note 8.

<sup>121</sup> See Registration Statement, *supra* note 22.

<sup>122</sup> See Exchange Letter, *supra* note 8, at 22.

<sup>123</sup> See *id.*

<sup>124</sup> 15 U.S.C. 78k–1(a)(1)(C)(iii).

Quotation and last-sale information for the Shares will be available via NASDAQ proprietary quote and trade services, as well as in accordance with any UTP plans for a Fund's Shares.<sup>125</sup> Additionally, information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.<sup>126</sup> Further, information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.<sup>127</sup>

The value of each Fund's Underlying Benchmark, as well as information about each Fund's Underlying Benchmark constituents, the weighting of the constituents, the Underlying Benchmark's methodology, and the Underlying Benchmark's rules, will be available at no charge on the Index Provider's Web site at *us.spindices.com* or, in the case of the VIX Fund, the CBOE's Web site at *www.cboe.com/VIX*.<sup>128</sup> The value of each Fund's Underlying Benchmark also will be published by one or more major market data vendors on at least a 15-second delayed basis during the Regular Market Session.<sup>129</sup> An Intraday Indicative Value for each Fund will be disseminated and made available by a major market vendor, and will be updated and widely disseminated and broadly displayed on at least a 15-second delayed basis during the Regular Market Session.<sup>130</sup> Class Values and Class Values per Share of each Fund will be calculated by the Fund's Custodian at the end of each Regular Market Session.<sup>131</sup>

Under NASDAQ Rule 5713(f)(i)(B), the Exchange will obtain a representation from the Trust on behalf of each Fund that the Class Value per Share of each of its Up Shares and Down Shares will be calculated daily and that these Class Values per Share and information about the assets of the Fund will be made available to all market participants at the same time.<sup>132</sup> In addition, NASDAQ Rule 5713(f)(2)(B) permits the Exchange to suspend

trading in or remove from listing Paired Class Shares whose Underlying Benchmark, or a substitute or replacement Underlying Benchmark based on the same Reference Asset,<sup>133</sup> is no longer calculated or available on at least a 15-second delayed basis during the Regular Market Session from a major market data vendor unaffiliated with the sponsor, the custodian, the trustee of the Trust, the Fund or NASDAQ.

The Commission believes that, in light of the continuous dissemination of information about the Shares' current market prices, the Funds' Underlying Benchmarks, and the Funds' intraday estimated Class Value per Share, arbitrage opportunities will be readily identifiable to market participants. The Commission also believes that the creation and redemption process, which, under Rule 5713(c), uses a neutral basket of Up Shares and Down Shares, is reasonably designed to allow market participants to arbitrage away premiums and discounts that may develop, as long as the Up Shares and Down Shares do not become locked in a persistent state of approximately equal and opposite premiums or discounts.<sup>134</sup>

The Commission acknowledges, however, that the normal arbitrage mechanism of the Funds will not be effective if equal and opposite premiums and discounts persist between the Up Shares and Down Shares of a Fund. Because no existing exchange-traded products use a paired-class structure, the Commission does not have a basis for comparison from which to predict how frequently such conditions are likely to occur. As noted above, however, the Funds would provide for a corrective distribution when the magnitude of the equal and opposite premiums and discounts exceeds a certain threshold.<sup>135</sup> The Exchange has represented that, "[e]ven if a corrective distribution is not triggered, the existence of a Fund's corrective distribution feature is expected to modify investor and

Authorized Participant behavior to prevent persistent and material premium and discount conditions for Paired Class Shares from becoming locked."<sup>136</sup> Based on the Exchange's representation, the Commission believes that the corrective distribution mechanism is reasonably designed to limit the magnitude of such premiums and discounts and that, when triggered, it will provide investors with a market neutral position that should allow them to exit the affected Fund at Class Value. Further, the underlying value of the Funds and the extent of the premiums and discounts would not be subject to uncertainty, because, as explained above,<sup>137</sup> the Funds' market prices, Class Values per Share, and reference benchmark values and methodologies would be publicly available in real time. In addition, and significantly, to the extent that equal and opposite premiums and discounts persist *within* a Fund's threshold for a corrective distribution, all investors in the affected Fund would be subject to the same pricing conditions, and Authorized Participants would not be able to use the creation and redemption process to trade in the primary market for the shares at prices more favorable than those available to investors trading at market prices on the Exchange.

Thus, for the reasons described above, the Commission believes that the Exchange's rules are reasonably designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

## 2. Investor Understanding and Suitability

In the OIP, the Commission solicited comments about whether retail investors and other market participants would be able to understand the types and timing of distributions as well as the periodic resets of Paired Class Shares' exposure to their Underlying Benchmarks.<sup>138</sup>

The opposing commenter argues that the operational complexity of Paired Class Shares renders them unsuitable for any investor. As discussed above, this commenter argues that extreme diligence would be required of investors in tracking their positions because the Up Shares might frequently turn into both Up Shares and Down Shares, and that investors would need to know a

<sup>133</sup> Commentary .04 to Rule 5713 states that, prior to a substitute or replacement Underlying Benchmark being selected for the Fund, NASDAQ must file a related proposed rule change pursuant to Rule 19b-4 under the Act to continue trading the Paired Class Shares.

<sup>134</sup> Because the funds would create and redeem their shares only in equal amounts of Up Shares and Down Shares, if one class of shares traded at a premium, and the other class traded at an approximately equal discount, arbitrage using the creation or redemption process could not eliminate those price deviations. For example, if Up Shares traded at a \$0.50 premium, and down shares traded at a \$0.50 discount, the value per share of a creation unit, composed of equal amounts of each class, would be equal to the NAV of the fund (*i.e.*, the premium would cancel out the discount).

<sup>135</sup> See *supra* note 18.

<sup>136</sup> See Notice, *supra* note 3, at 9, 79 FR at 35612.

<sup>137</sup> See *supra* text accompanying notes 125-133.

<sup>138</sup> See OIP, *supra* note 6, 79 FR at 57157.

<sup>125</sup> See Notice, *supra* note 3, 79 FR at 35621.

<sup>126</sup> See *id.*

<sup>127</sup> See *id.*

<sup>128</sup> See *id.*

<sup>129</sup> See NASDAQ Rule 5713(f)(2)(B).

<sup>130</sup> See Notice, *supra* note 3, 79 FR at 35622.

<sup>131</sup> NASDAQ Rule 5713(f)(ii)(C) is designed to ensure that the Class Values and Class Values per Share of each Fund will be made available to all market participants at the same time.

<sup>132</sup> The Commission notes that these requirements are substantively identical to provisions applicable to other exchange-traded derivative securities products, including Managed Fund Shares under NASDAQ Rule 5735(d)(1)(B).

considerable amount of information at every point in time when holding Shares.<sup>139</sup>

The Sponsor asserts that retail investors and other market participants will be able to understand the types and timing of fund distributions. The Sponsor states that the Registration Statement contains detailed examples, and the Funds' Web site will contain infographics describing each distribution, as well as the courses of action available to investors. According to the Sponsor, distributions will generally be limited to scheduled dates or the occurrence of large and rare underlying index moves, and movements of the underlying indexes will be easy to track using public sources. The Sponsor states that the consensus of qualified investors and market makers to whom it has spoken is that the frequency of the Funds' distributions is consistent with customary review (e.g., monitoring prices and returns) and customary re-evaluation of share positions. Additionally, the Sponsor states that, except in limited and unanticipated conditions which are identified in the Registration Statement, regular and special distributions will be made to shareholders in cash, and therefore investors generally will face a straightforward decision with respect to deploying or maintaining received cash. With respect to corrective distributions (in which a fund would issue each holder of Up Shares an equal number of Down Shares, and each holder of Down Shares an equal number of Up Shares), the Sponsor asserts that such distributions are expected to be rare and to encourage among Authorized Participants both more active and accurate market making and more liquidity-enhancing position-taking. The Sponsor also argues that corrective distributions, as a self-policing and self-correcting measure, are a better alternative to detailed disclosures about premiums and discounts in prospectuses, which investors may not necessarily read and which would require affirmative investor action, and the dissemination of real-time estimates of indicative portfolio values, which investors may not necessarily consider before transacting in other types of ETP shares. Further, the Sponsor states that prospective investors to whom it has spoken believe that the corrective distribution will benefit the entire range of shareholders.

With respect to the resets, the Sponsor states that the Funds are similar to comparable ETPs in the market and that

it expects that both retail investors and other market participants will understand the effect of Paired Class Share resets on their investments.<sup>140</sup> The Sponsor also asserts that individual investors will be able to more easily track and monitor Paired Class Share resets than the resetting impact in other types of ETPs.

The Sponsor also argues that the Exchange's sales practice rules adequately ensure the suitability of sales recommendations regarding the Funds' Shares, citing NASDAQ Rule 2111A, which requires that an exchange member have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for a given customer, based on information obtained through reasonable diligence.<sup>141</sup> Additionally, the Sponsor notes that, before trading in the Shares begins, the Exchange will inform its members in an information circular of the special characteristics and risks associated with trading Paired Class Shares.<sup>142</sup>

The Commission notes that the Exchange's suitability rule, NASDAQ Rule 2111A, requires that Exchange members and associated persons of a member comply with Financial Industry Regulatory Authority ("FINRA") Rule 2111, which requires member firms and their associated persons to "have a reasonable basis to believe" that a

<sup>140</sup> Specifically, the Sponsor states that for comparable ETPs that seek commodity or volatility exposure through trading in derivative products, the impact of resetting comes through the "re-trading" of futures, options, or other contracts. These ETPs effect the resetting either daily, monthly, or on another cycle. This conventional resetting has transaction costs, which are often difficult to isolate within the context of overall fund performance. The Sponsor adds that, since the traditional method of resetting is accomplished through the trading of underlying positions at telegraphed times under prescribed fund rules, ETPs can be disadvantaged from having to be a "price taker" in possibly adverse or challenging markets. The Sponsor asserts that these resetting considerations in these other types of ETPs are well known by retail investors. See Sponsor Letter, *supra* note 8, at 7-8.

<sup>141</sup> See *id.* at 8-9.

<sup>142</sup> The Exchange has represented that the information circular will discuss (a) the procedures for purchases and redemptions of Paired Class Shares; (b) Rule 2111A, which imposes suitability obligations on Exchange members with respect to recommending transactions in Paired Class Shares to customers; (c) how information regarding the Underlying Benchmark and Intraday Indicative Value is disseminated; (d) the risks involved in trading Paired Class Shares during the Pre-Market and Post-Market sessions when an updated Underlying Benchmark and Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Paired Class Shares; (g) trading information; and (h) how information regarding distributions and share splits is disseminated and the requirements of public notification of these events.

transaction or investment strategy involving securities that they recommend is suitable for the customer. Specifically, this reasonable belief must be based on the information obtained through the reasonable diligence of the firm or associated person to ascertain the customer's investment profile. The rule requires firms and associated persons to seek to obtain information about the customer's age; other investments; financial situation and needs, which might include questions about annual income and liquid net worth; tax status, such as marginal tax rate; investment objectives, which might include generating income, funding retirement, buying a home, preserving wealth, or market speculation; investment experience; investment time horizon, such as the expected time available to achieve a particular financial goal; liquidity needs, which is the customer's need to convert investments to cash without incurring significant loss in value; and risk tolerance, which is a customer's willingness to risk losing some or all of the original investment in exchange for greater potential returns.

Additionally, the Commission notes that the Funds will issue specific, public notifications regarding the unique distributions that the Funds would provide. Each Fund engaging in a regular distribution,<sup>143</sup> a special distribution, a corrective distribution, or a net income distribution<sup>144</sup> will provide at least three business days' advance notice (or longer advance notice as may be required by the Exchange)<sup>145</sup> of such an event. Each Fund engaging in a share split will provide at least ten calendar days' advance notice (or longer advance

<sup>143</sup> With respect to regular distributions, the information provided will consist of the schedule of distributions and associated distribution dates, and a notification, as of the record date for such regular distribution, on the Sponsor's Web site ([www.AccuShares.com](http://www.AccuShares.com)) as to whether or not the regular distribution will occur. See Notice, *supra* note 3, 79 FR at 35620. For regular distributions that occur on schedule, the Sponsor will cause a press release to be issued identifying the receiving class, the amount of cash, the amount of Paired Class Shares (if any), and any other information the Sponsor deems relevant regarding the distribution and post such information on the Sponsor's Web site. See *id.*

<sup>144</sup> With respect to special distributions, corrective distributions, and share splits, the information provided will include the relevant ex-, record, and payment dates for each such event and relevant data concerning each such event. In addition, notice of net income distributions for each class of a Fund, if any, will also be included in the notifications of regular, special, and corrective distributions. See *id.*

<sup>145</sup> The Exchange may determine that longer notice is advisable in some circumstances (e.g., an extended, or unexpected, market break). See *id.* at 35620, n.46.

<sup>139</sup> See Kassner Letter, *supra* note 8, at 3-4.

notice as may be required by the Exchange)<sup>146</sup> of such an event. In each instance, the Sponsor will notify the Exchange and post a notice of the event and its details on the Sponsor's Web site.

The Commission further notes that the prospectus disclosures for the Funds state prominently that the Funds are not suitable for all investors, and include the following disclosures: (1) Stating that the funds may not be suitable for all investors; (2) describing the effect of distributions on an investor's exposure; and (3) stating that "*Investors who do not intend to actively manage and monitor their Fund investments at least as frequently as each distribution date should not buy shares of the Fund.*" (Emphasis in original.)

Based on all of the foregoing, the Commission believes that the Exchange has adequately responded to the opposing commenter's concerns about investor understanding and suitability, and that the Exchange's proposal is consistent with the public interest and the protection of investors.

For the foregoing reasons, the Commission finds that the Exchange's proposal to adopt NASDAQ Rule 5713 and to list and trade the Funds pursuant to that rule is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>147</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>148</sup> that the proposed rule change (SR-NASDAQ-2014-065), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

By the Commission.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-03713 Filed 2-23-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74297; File No. SR-BATS-2014-056]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of the iShares U.S. Fixed Income Balanced Risk ETF of the iShares U.S. ETF Trust Under Rule 14.11(i)

February 18, 2015.

#### I. Introduction

On December 19, 2014, BATS Exchange, Inc. ("BATS" or the "Exchange") 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade the shares ("Shares") of the iShares U.S. Fixed Income Balanced Risk ETF ("Fund") under BATS Rule 14.11(i). The proposed rule change was published for comment in the **Federal Register** on January 6, 2015.<sup>3</sup> On February 12, 2015, BATS filed Amendment No. 1 to the proposal.<sup>4</sup> The Commission received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

#### II. Description of the Proposed Rule Change

##### A. The Exchange's Proposal

The Exchange proposes to list and trade Shares of the Fund under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the iShares U.S. ETF Trust ("Trust"), a Delaware statutory trust, which is registered with the Commission as an open-end investment company.<sup>5</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 73965 (December 30, 2014), 80 FR 585 ("Notice").

<sup>4</sup> In Amendment No. 1, the Exchange amended the proposed rule change to note that all of the exchange listed investment company securities and futures in which the Fund will invest will trade on markets that are a member of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement. Amendment No. 1 provided clarification to the proposed rule change, and because it does not materially affect the substance of the proposed rule change or raise novel or unique regulatory issues, Amendment No. 1 is not subject to notice and comment.

<sup>5</sup> See Registration Statement on Form N-1A for the Trust, dated April 21, 2014 (File Nos. 333-

BlackRock Fund Advisors will be the investment adviser ("BFA" or "Adviser") to the Fund.<sup>6</sup> The Exchange represents that the (i) Adviser is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented fire walls with respect to such broker dealer affiliates regarding access to information concerning the composition of or changes to the Fund's portfolio, and (ii) Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio.<sup>7</sup> BlackRock Investments, LLC serves as the distributor of the Fund's Shares, and State Street Bank and Trust Company is the administrator, custodian, and transfer agent for the Trust.

##### B. The Exchange's Description of the Fund

The Exchange has made the following additional representations and statements in describing the Fund and its investment strategy, including portfolio holdings and investment restrictions.<sup>8</sup>

179904 and 811-22649) ("Registration Statement"). In addition, the Exchange states that the Trust has obtained certain exemptive relief under the Investment Company Act of 1940 ("1940 Act"). See Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812-13601) ("Exemptive Order").

<sup>6</sup> BlackRock Fund Advisors is an indirect wholly owned subsidiary of BlackRock, Inc.

<sup>7</sup> BATS Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, the investment adviser shall erect a firewall between the investment adviser and the broker-dealer with respect to access to information concerning the composition of or changes to the investment company portfolio. In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the misuse and dissemination of material nonpublic information regarding the applicable investment company portfolio. The Exchange states that, in the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, such adviser or sub-adviser will implement a firewall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

<sup>8</sup> The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. See Notice, *supra* note 3, and Registration Statement, *supra* note 5, respectively.

<sup>146</sup> See *id.*

<sup>147</sup> This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice.

<sup>148</sup> 15 U.S.C. 78s(b)(2).

## Principal Investments

According to the Exchange, the Fund will seek total return and preservation of capital. The Fund is an actively-managed fund that does not seek to replicate the performance of a specified index. The Fund intends to achieve its investment objective by investing, under normal circumstances,<sup>9</sup> at least 80% of its net assets in a portfolio of U.S. dollar-denominated investment-grade and high-yield fixed-income securities ("Fixed Income Securities"), futures, and swaps, as described below. The Fund seeks to provide exposure to a portfolio of Fixed Income Securities where the expected contribution of interest rate risk and credit spread risk are approximately equal.

The Fund may invest, without limitation, in high-yield securities rated CCC or higher by Moody's Investors Service, Inc. or equivalently rated by Standard & Poor's Financial Services LLC and/or Fitch, or, if unrated, determined by the Adviser to be of equivalent quality.<sup>10</sup> Under normal circumstances, the Fund will invest primarily in fixed-rate Fixed Income Securities of varying maturities.

Fixed Income Securities in which the Fund may invest will include only the following instruments:<sup>11</sup> fixed and

floating rate debt securities, such as corporate bonds<sup>12</sup> and government bonds; agency securities;<sup>13</sup> instruments of non-U.S. issuers;<sup>14</sup> privately-issued securities;<sup>15</sup> municipal bonds; money market securities;<sup>16</sup> and exchange traded and non-exchange traded investment companies (including investment companies advised by the Adviser or its affiliates) that invest in such Fixed Income Securities.<sup>17</sup>

weight of the portfolio (Rule 14.11(c)(4)(B)(i)(d)). For the purposes of this footnote, the term "fixed income securities" includes all holdings of the Fund.

<sup>12</sup> While the Fund is permitted to invest without restriction in corporate bonds, the Exchange states that, under normal circumstances, the Fund will generally invest in corporate bond issuances that have at least \$250 million par amount outstanding.

<sup>13</sup> The Exchange states that "agency securities" for this purpose generally includes securities issued by the following entities: Government National Mortgage Association (Ginnie Mae), Federal National Mortgage Association (Fannie Mae), Federal Home Loan Banks (FHLBanks), Federal Home Loan Mortgage Corporation (Freddie Mac), Farm Credit System (FCS) Farm Credit Banks (FCBanks), Student Loan Marketing Association (Sallie Mae), Resolution Funding Corporation (REFCORP), Financing Corporation (FICO), and the Farm Credit System (FCS) Financial Assistance Corporation (FAC). Agency securities may include, but are not limited to, mortgage-backed securities.

<sup>14</sup> The Exchange states that "instruments of non-U.S. issuers" means U.S. dollar-denominated fixed income securities issued by non-U.S. corporate or sovereign entities.

<sup>15</sup> The Exchange states that "privately-issued securities" generally includes Rule 144A securities and, in this context, may include both mortgage-backed and non-mortgage 144A securities. The Exchange represents that, to the extent that the Fund's holding of privately-issued securities include non-agency mortgage-backed securities or illiquid assets, such holdings will be subject to the limitations established in the "Other Investments" and "Investment Restrictions" sections set forth below, as applicable.

<sup>16</sup> The Exchange represents that, under normal circumstances, the Fund intends to invest in money market securities in a manner consistent with its investment objective in order to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, and to satisfy margin requirements, to provide collateral or to otherwise back investments in derivative instruments. For these purposes, money market securities include: Short-term, high-quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; repurchase agreements; money market mutual funds; commercial paper; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. All money market securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated money market securities. However, it may do so, to a limited extent, such as where a rated money market security becomes unrated, if such money market security is determined by the Adviser to be of comparable quality. See *supra* note 10.

<sup>17</sup> The Exchange states that the Fund currently anticipates investing in only registered open-end investment companies, including mutual funds and the open-end investment company funds described in BATS Rule 14.11, but notes that the Exemptive

The Adviser will utilize a model-based proprietary investment process to assemble an investment portfolio comprised of (i) long positions in U.S. dollar denominated investment-grade corporate bonds selected by BFA based on certain criteria determined by BFA to be indicators of creditworthiness; (ii) long positions in U.S. dollar-denominated high-yield corporate bonds selected by BFA based on certain criteria determined by BFA to be indicators of creditworthiness; (iii) long positions in U.S. dollar-denominated agency mortgage backed securities; (iv) long positions in U.S. dollar denominated agency mortgage to-be-announced transactions; (v) long positions in U.S. Treasury securities; (vi) short positions in U.S. Treasury futures; and (vii) short positions in U.S. Treasury securities through transactions in interest rate swaps. The Fund seeks to invest in a portfolio of Fixed Income Securities that in the aggregate has approximately equal exposure to credit spread risk and interest rate risk, which is measured by the Adviser as the volatility of returns of a security associated with changes in the security's credit spread or changes in interest rates.

The Fund will adjust the allocation among its underlying securities in an effort to achieve a target credit spread risk and interest rate risk for the Fund's portfolio. When necessary to balance the Fund's exposure to interest rate risk against its exposure to credit spread risk, the Fund may take short or long positions in U.S. Treasury futures and, through transactions in interest rate swaps, take short positions in U.S. Treasury securities. The Adviser will determine the aggregate credit spread risk and interest rate risk of the Fund's portfolio. The Fund may also invest in other interest rate futures contracts, including but not limited to, Eurodollar and Federal Funds futures.<sup>18</sup>

In selecting corporate securities for the Fund, the Adviser may employ a credit screening process centered on research and analysis of issuer credit quality to reduce exposure to credit issuers that have potential for experiencing credit deterioration. The remaining credit portfolio is then constructed to match the key target risk characteristics which BFA determines to be relevant in prevailing market conditions.

Order allows the Fund to invest in "shares of other ETFs, shares of money market mutual funds, or other investment companies."

<sup>18</sup> The Exchange represents that derivatives held as part of the Fund's principal investment strategy will be exchange traded and/or centrally cleared, and they will be collateralized.

<sup>9</sup> The term "under normal circumstances" 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.

<sup>10</sup> According to the Exchange, the Adviser may determine that unrated Fixed Income Securities are of "equivalent quality" based on such credit quality factors that it deems appropriate, which may include among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical ratings organization when rating similar securities and issuers. In making such a determination, the Adviser may consider internal analyses and risk ratings, third party research and analysis, and other sources of information, as deemed appropriate by the Adviser.

<sup>11</sup> The Exchange represents that the Fund's portfolio will meet the following requirements of Rule 14.11(c)(4)(B)(i), which governs the listing and trading of fixed income based Index Fund Shares: (1) Components that in the aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of \$100 million or more (Rule 14.11(c)(4)(B)(i)(b)); (2) a component may be a convertible security, however, once the convertible security component converts to an underlying equity security, the component is removed from the index or portfolio (Rule 14.11(c)(4)(B)(i)(c)); and (3) no component fixed-income security (excluding Treasury Securities) will represent more than 30% of the weight of the portfolio, and the five highest weighted component fixed-income securities do not in the aggregate account for more than 65% of the

To adjust the exposure to interest rate risks, the Adviser may employ short positions primarily in U.S. Treasury futures and interest rate swaps. By taking these short positions, the Adviser seeks to mitigate, but not eliminate, the impact of Treasury interest rates on the performance of the underlying bonds. The short positions are not intended to mitigate other factors influencing the price of bonds.

In the absence of normal circumstances, the Fund may temporarily depart from its normal investment process, provided that such departure is, in the opinion of the Adviser, consistent with the Fund's investment objective and in the best interests of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in response to adverse market, economic, or political conditions.

#### Other Investments

In addition to the derivatives holdings described above as part of the Fund's principal investment strategy, the Fund may also, to a limited extent (under normal circumstances, less than 20% of the Fund's net assets), engage in transactions in the following instruments in order to serve additional investment objectives of the Fund:<sup>19</sup> treasury futures, interest rate swaps, credit default swaps, asset-backed Fixed Income Securities,<sup>20</sup> non-agency mortgage-backed fixed-income securities,<sup>21</sup> and structured securities.<sup>22</sup>

<sup>19</sup>In addition to the uses described above, the Exchange states that derivatives might be included in the Fund's investments to serve additional investment objectives of the Fund, which uses are limited to the following: Using a combination of treasury futures, interest rate swaps, and credit default swaps to equitize coupon income and cash holdings. The Exchange represents that the derivatives in which the Fund will invest will be exchange traded and/or centrally cleared, and they will be collateralized.

<sup>20</sup>The Exchange states that asset-backed securities are fixed-income securities that are backed by a pool of assets, usually loans such as installment sale contracts or credit card receivables.

<sup>21</sup>The Exchange states that mortgage-backed securities are asset-backed securities based on a particular type of asset, a mortgage. The Exchange states that there are a wide variety of mortgage-backed securities involving commercial or residential, fixed-rate or adjustable rate mortgages, and mortgages issued by banks or government agencies.

<sup>22</sup>The Exchange states that "structured securities" generally include privately-issued and publicly-issued structured securities, including certain publicly-issued structured securities that are not agency securities, excluding agency mortgage backed securities. Examples include, but are not limited to: Asset-backed securities backed by assets such as consumer receivables, credit cards, student loans, and equipment leases; asset-backed commercial paper; credit linked notes; and secured funding notes. Structured securities do not include agency mortgage-backed securities.

#### Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser<sup>23</sup> under the 1940 Act. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve leveraged or inverse leveraged returns (*i.e.* two times or three times the Fund's benchmark).

The Fund is a non-diversified fund and therefore may invest a greater portion of its assets in the securities of one or more issuers than a diversified fund. The Fund, however, will not purchase the securities of issuers conducting their principal business activity in the same industry if, immediately after the purchase and as a result thereof, the value of the Fund's investments in that industry would equal or exceed 25% of the current value of the Fund's total assets, provided that this restriction does not limit the Fund's: (i) Investments in securities of other investment companies, (ii) investments in securities issued or guaranteed by the U.S. government, its agencies, or instrumentalities, or (iii) investments in repurchase agreements collateralized by U.S. government securities.

<sup>23</sup>In reaching liquidity decisions, the Adviser may consider factors including: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; the nature of the security and the nature of the marketplace in which it trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer); any legal or contractual restrictions on the ability to transfer the security or asset; significant developments involving the issuer or counterparty specifically (*e.g.*, default, bankruptcy, etc.) or the securities markets generally; and settlement practices, registration procedures, limitations on currency conversion or repatriation, and transfer limitations (for foreign securities or other assets).

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with the requirements of Section 6 of the Act<sup>24</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>25</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>26</sup> 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 foster cooperation and coordination with persons engaged in 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 also 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,<sup>27</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. The Commission notes that the Fund and the Shares must comply with the requirements of BATS Rule 14.11(i) to be listed and traded on the Exchange.

According to the Exchange, quotation and last-sale information for the Shares will be available on the facilities of the Consolidated Tape Association ("CTA"), and the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.<sup>28</sup> Additionally, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.<sup>29</sup> Daily trading volume information for the Fund will also be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson

<sup>24</sup> 15 U.S.C. 78(f).

<sup>25</sup> 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).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>28</sup> See Notice, *supra*, note 3, 80 FR at 590.

<sup>29</sup> See *id.*



Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites.<sup>30</sup> The Exchange states that intraday, executable price quotations for the underlying Fixed Income Securities and non-exchange traded derivatives, including non-exchange listed investment companies, are available from major broker-dealer firms and, for the underlying exchange-traded assets, including investment companies and futures, such intraday information is available directly from the applicable listing exchange.<sup>31</sup> Further, the Exchange states that intraday price information for all such instruments is available through subscription services, such as Bloomberg, Thomson Reuters and International Data Corporation, which can be accessed by authorized participants and other investors.<sup>32</sup>

In addition, the Intraday Indicative Value of the Fund,<sup>33</sup> as defined in BATS Rule 14.11(i)(3)(C), that reflects an estimated intraday value of the Fund's portfolio, will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.<sup>34</sup> On each business day, before commencement of trading in Shares during Regular Trading Hours<sup>35</sup> on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day ("Disclosed Portfolio").<sup>36</sup>

<sup>30</sup> See *id.*

<sup>31</sup> See *id.*

<sup>32</sup> See *id.*

<sup>33</sup> According to the Exchange, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio. The quotations of certain of the Fund's holdings may not be updated during U.S. trading hours if such holdings do not trade in the United States or if updated prices cannot be ascertained. See *id.*

<sup>34</sup> See *id.* Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values published via the CTA or other data feeds. See *id.*

<sup>35</sup> Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

<sup>36</sup> On a daily basis, the Disclosed Portfolio displayed on the Fund's Web site will include the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, if any; 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 or other asset or instrument underlying the holding, if any; 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; market value of the holding; and the percentage weighting of the

The Net Asset Value ("NAV") of the Fund's Shares will generally be calculated once daily as of the close of regular trading on the Exchange, generally 4:00 p.m. Eastern Time on each day that the Exchange is open for trading.<sup>37</sup> The Adviser will make available through the National Securities Clearing Corporation on each business day, prior to the opening of business on the Exchange, the list of names and the required number or par value of each security, as well as the amount of the cash, comprising the creation basket of the Fund for that day.<sup>38</sup> The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.<sup>39</sup>

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.<sup>40</sup> Further,

holding in the Fund's portfolio. The Web site information will be publicly available at no charge. See *id.*

<sup>37</sup> See *id.* at 588. The NAV per Share is calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. According to the Exchange, for purposes of calculating NAV, the Fund values non-exchange traded Fixed Income Securities using prices provided directly from one or more broker-dealers, market makers, independent third-party pricing services which may use matrix pricing and valuation models to derive values, or, for investment companies, NAV. Exchange traded instruments, including exchange traded Fixed Income Securities and futures, will be valued at market closing price or, if no sale has occurred, at the last quoted bid price on the primary exchange on which they are traded. Price information for exchange traded instruments, including exchange traded derivatives, will be taken from the exchange where the security is primarily traded. Over-the-counter derivatives are valued based upon quotations from market makers or by a pricing service in accordance with valuation procedures approved by the Fund's board of directors. Certain short-term debt securities will be valued on the basis of amortized cost. Generally, trading in certain Fixed Income Securities and derivatives is substantially completed each day at various times prior to the close of business on the Exchange, and the values of such securities and derivatives used in computing the NAV of the Fund are determined at such times. When market quotations are not readily available or are believed by the Adviser to be unreliable, the Fund's investments are valued at fair value by the Adviser in accordance with policies and procedures approved by the Fund's board of directors and in accordance with the 1940 Act. *Id.*

<sup>38</sup> See *id.* at 589.

<sup>39</sup> See *id.* at 592.

<sup>40</sup> See *id.* at 590.

trading in the Shares will be subject to BATS Rules 11.18 and 14.11(i)(4)(B)(iv), which set forth circumstances under which trading in Shares of the Fund may be halted.<sup>41</sup> Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>42</sup> Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio 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.<sup>43</sup> The Exchange represents that it prohibits the distribution of material, non-public information by its employees.<sup>44</sup> The Exchange also states that the Adviser is not a broker-dealer, but is affiliated with multiple broker-dealers and has implemented fire walls with respect to such broker dealer affiliates regarding access to information concerning the composition of or changes to the portfolio.<sup>45</sup> The Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange traded investment companies and futures via

<sup>41</sup> See *id.*

<sup>42</sup> See *id.*

<sup>43</sup> See BATS Rule 14.11(i)(4)(B)(ii)(b).

<sup>44</sup> See Notice, *supra* note 3, 80 FR at 591.

<sup>45</sup> See *supra* note 7 and accompanying text. The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and 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.

the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to Financial Industry Reporting Authority's ("FINRA") Trade Reporting and Compliance Engine ("TRACE").<sup>46</sup>

The Exchange represents that the Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.<sup>47</sup> In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares, which are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Opening and After Hours Trading Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members 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 Fund must be in compliance with Rule 10A-3 under the Exchange Act.<sup>48</sup>

(6) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

(7) The Fund will invest at least 80% of its assets, under normal market conditions, in U.S. dollar-denominated investment-grade and high-yield Fixed-Income Securities, futures, and swaps.

(8) Derivatives investments held by the Fund will be exchange traded and/or centrally cleared, and they will be collateralized.

(9) The Fund will generally invest in corporate bond issuances that have at least \$250 million par amount outstanding.

(10) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment); will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained; and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.

(11) All of the exchange listed investment company securities and futures that the Fund will invest in will trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(12) The Fund will not invest in non-U.S. equity securities.

(13) The Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve leveraged or inverse leveraged returns (*i.e.* two times or three times the Fund's benchmark).

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act<sup>49</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>50</sup> that the proposed rule change (SR-BATS-2014-

056), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>51</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015-03666 Filed 2-23-15; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74284; File No. SR-BYX-2015-09]

### Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for the BATS One Feed, and Amend Fees for BYX Top and BYX Last Sale

February 18, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 3, 2015, BATS Y-Exchange, Inc. ("BYX" 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 Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend its fee schedule to establish fees for the BATS One Feed, amend fees for BYX Top and BYX Last Sale, add definitions for terms that apply to market data fees, and make certain technical, non-substantive changes.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>51</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>46</sup> See Notice, *supra* note 3, 80 FR at 591.

<sup>47</sup> See *id.* at 590.

<sup>48</sup> 17 CFR 240.10A-3.

<sup>49</sup> 15 U.S.C. 78f(b)(5).

<sup>50</sup> 15 U.S.C. 78s(b)(2).

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend its fee schedule to establish fees for the BATS One Feed, amend fees for BYX Top and BYX Last Sale, add definitions for terms that apply to market data fees, and make certain technical, non-substantive changes.

#### Technical, Non-Substantive Changes

The Exchange proposes the following technical, non-substantive amendments to its fee schedule regarding its existing market data fees. The Exchange proposes to rename the section entitled "BYX Exchange PITCH Feed" as the "BYX Depth", "BYX Exchange Top Feed" as "BYX Top", "BYX Exchange Last Sale Feed" as "BYX Last Sale", "BYX Exchange Historical TOP" as "BYX Historical Top", and "Historical PITCH" as "Historical Depth." The Exchange does not propose to amend the content of these market data products; nor does the Exchange propose to amend the fees for these products, other than for BYX Top and BYX Last Sale as described below.

#### Definitions Applicable to Market Data Fees

The Exchange proposes to include in its fee schedule the following defined terms that relate to the Exchange's market data fees. The proposed definitions are designed to provide greater transparency with regard to how the Exchange assesses fees for market data. The Exchange notes that none of the proposed definitions are designed to amend any fee, nor alter the manner in which it assesses fees.

First, the Exchange proposes to define a "Distributor" as "any entity that receives an Exchange Market Data product directly from the Exchange or indirectly through another entity and

then distributes it internally or externally to a third party."<sup>5</sup> In turn, an Internal Distributor and External Distributor will be separately defined. An Internal Distributor will be defined as a "Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity."<sup>6</sup> An External Distributor will be defined as a "Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity."<sup>7</sup>

Secondly, the Exchange proposes to add a definition of "User" to its fee schedule. A User will be defined as a "natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data." For purposes of its market data fees, the Exchange will distinguish between "Non-Professional Users" and "Professional Users." Specifically, a Non-Professional User will be defined as "a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association; any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that will require registration or qualification if such functions were performed for an organization not so exempt."<sup>8</sup> A Professional User will be defined as "any User other than a Non-Professional User."<sup>9</sup>

#### BYX Top and BYX Last Sale

The cost of BYX Last Sale for an Internal Distributor is \$500 per month. Likewise, the cost of BYX Top for an Internal Distributor is \$500 per month. The Exchange does not charge per User fees for either BYX Last Sale or BYX Top. Therefore, the Exchange does not

<sup>5</sup> The proposed definition of "Distributor" is similar to Nasdaq Rule 7047(d)(1).

<sup>6</sup> The proposed definition of "Internal Distributor" is similar to Nasdaq Rule 7047(d)(1)(A).

<sup>7</sup> The proposed definition of "External Distributor" is similar to Nasdaq Rule 7047(d)(1)(B).

<sup>8</sup> The proposed definition of "Professional User" is similar to Nasdaq Rule 7047(d)(3)(A).

<sup>9</sup> The proposed definition of "Non-Professional User" is similar to Nasdaq Rule 7047(d)(3)(B).

require an External Distributor of BYX Last Sale or BYX Top to count, classify (e.g., professional or non-professional) or report to the Exchange information regarding the customers to which they provide the data. Instead, the Exchange currently charges an External Distributor of BYX Last Sale a flat fee of \$2,500 per month. The Exchange also currently separately charges an External Distributor of BYX Top a flat fee of \$2,500 per month. End Users do not pay the Exchange for BYX Last Sale or BYX Top, nor are end Users required to enter into contracts with the Exchange.

The Exchange proposes to decrease the External Distributor Fee for BYX Top and BYX Last Sale from \$2,500 to \$1,250 per month.<sup>10</sup> The Exchange also proposes to now allow subscribers to either BYX Top or BYX Last Sale to also receive, upon request and at no additional cost, BYX Last Sale or BYX Top, as applicable. The Exchange also proposes to establish a New External Distributor Credit under which new External Distributors of BYX Top or BYX Last Sale will not be charged a Distributor Fee for their first three (3) months. The Exchange believes that the proposed pricing model is simple and easy for data recipients to comply with, and thus, will continue to result in a minimal additional administrative burden for data recipients who elect to receive both BYX Last Sale and BYX Top at no additional cost and at the decreased External Distribution fees.

#### BATS One Feed

The Commission recently approved a proposed rule change by the Exchange to establish a new market data product called the BATS One Feed.<sup>11</sup> The BATS One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer ("BBO") of all displayed orders for securities traded on BYX and its affiliated exchanges<sup>12</sup>

<sup>10</sup> End Users will continue to not pay the Exchange for BYX Last Sale or BYX Top, nor will end Users be required to enter into contracts with the Exchange.

<sup>11</sup> See Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the BATS One Feed) ("BATS One Approval Order").

<sup>12</sup> The Exchange's affiliated exchanges are EDGA Exchange, Inc. ("EDGA"), EDGX Exchange, Inc. ("EDGX"), and BATS Exchange, Inc. ("BZX", together with EDGX, BZX, and BYX, the "BATS Exchanges"). On January 23, 2014, BATS Global Markets, Inc. ("BGM"), the former parent company of the Exchange and BYX, completed its business combination with Direct Edge Holdings LLC, the parent company of EDGA and EDGX. See Securities

and for which the BATS Exchanges report quotes under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan.<sup>13</sup> The BATS One Feed also contains the individual last sale information for the BATS Exchanges (collectively with the aggregate BBO, the “BATS One Summary Feed”). In addition, the BATS One Feed contains optional functionality which will enable recipients to elect to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels for all securities that are traded on the BATS Exchanges in addition to the BATS One Summary Feed (“BATS One Premium Feed”). For each price level on one of the BATS Exchanges, the BATS One Premium Feed will include a two-sided quote and the number of shares available to buy and sell at that particular price level.

The Exchange uses the following data feeds to create the BATS One Summary Feed and the BATS One Premium Feed, each of which is available to other vendors: EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, and each of which have been previously published by the Commission.<sup>14</sup> A vendor that wishes to create a product like the BATS One Summary Feed could instead subscribe to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale.<sup>15</sup> The BATS Exchanges are the exclusive distributors of these individual data feeds from which certain data elements are taken to

create the BATS One Feed as well as the feeds that a vendor may use to create a product like the BATS One Summary Feed. By contrast, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that comprises the BATS One Feed. Any entity that receives, or elects to receive [sic], the individual data feeds or the feeds that may be used to create a product like the BATS One Feed would be able to, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients.<sup>16</sup>

The Exchange proposes to amend its fee schedule to incorporate fees related to the BATS One Feed. The Exchange proposes to charge different fees to vendors depending on whether the vendor elects to receive: (i) the BATS One Summary Feed; or (ii) the optional BATS One Premium Feed. These fees include the following, each of which are described in detail below: (i) Distributor Fees;<sup>17</sup> (ii) Usage Fees for both Professional and Non-Professional Users;<sup>18</sup> (iii) Enterprise Fees;<sup>19</sup> and (iv) a Data Consolidation Fee. The amount of each fee may differ depending on

whether they use the BATS One Feed data for internal or external distribution. Vendors that distribute the BATS One Feed data both internally and externally will be subject to the higher of the two Distributor Fees.

*Internal Distributor Fees.* As proposed, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of \$10,000 per month. The Exchange also proposes that each Internal Distributor shall pay a fee of \$15,000 per month where they elect to receive the BATS One Premium Feed. The Exchange does not propose to charge any User fees for the BATS One Feed where the data is received and subsequently internally distributed to Professional or Non-Professional Users.

*External Distributor Fees.* The Exchange proposes to charge those firms that distribute the BATS One Feed externally a fee of \$5,000 per month for the BATS One Summary Feed. As proposed, each External Distributor shall pay a fee of \$12,500 per month where they elect to receive the BATS One Premium Feed.

The BATS One Feed is comprised of data included in EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.<sup>20</sup> Currently, an External Distributor could create a competing product to the BATS One Premium Feed<sup>21</sup> by purchasing the [sic] each of these depth of book products from the individual BATS Exchanges and then performing its own aggregation and consolidation functions. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is \$12,500 per month,<sup>22</sup> equal to the \$12,500 per month External Distributor Fee proposed for the BATS One Premium Feed. An External Distributor that seeks to create a competing product to the BATS One Summary Feed could instead subscribe to the following data feeds: EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale,<sup>23</sup> and then perform their own aggregation and consolidation function. The combined External Distributor fees for

Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039). Upon completion of the business combination, DE Holdings and BGMI each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named “BATS Global Markets Holdings, Inc.,” changed its name to “BATS Global Markets, Inc.” and BGMI changed its name to “BATS Global Markets Holdings, Inc.”

<sup>13</sup> The Exchange understands that each of the BATS Exchanges will separately file substantially similar proposed rule changes with the Commission to implement fees for the BATS One Feed.

<sup>14</sup> See Securities Exchange Act Release Nos. 66864 (April 26, 2012), 77 FR 26064 (May 2, 2012) (SR-EDGX-2012-14); 66863 (April 26, 2012), 77 FR 26059 (May 2, 2012) (SR-EDGA-2012-15); 69936 (July 3, 2013), 78 FR 41483 (July 10, 2013) (SR-BATS-2013-39); 69935 (July 3, 2013), 78 FR 47447 (July 10, 2013) (SR-BYX-2013-023). See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

<sup>15</sup> See Securities Exchange Act Release Nos. 73990 (January 5, 2015) (SR-EDGA-2014-35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Top and Last Sale Data Feeds); 73989 (January 5, 2015) (SR-EDGX-2014-36) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Top and Last Sale Data Feeds). See also BZX and BYX Rules 11.22(d) and (g).

<sup>16</sup> See BATS One Approval Order, *supra* note 11. The Exchange notes that a vendor can obtain the underlying depth-of-book feeds as well as EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale on the same latency basis as the Exchange would receive the underlying depth-of-book feeds necessary to create the BATS One Feed, including the BATS One Summary Feed. *Id.*

<sup>17</sup> The Exchange notes that Distributor Fees as well as the distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. See Nasdaq Rule 7019(b); see also Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR-PHLX-2010-120); Securities Exchange Act Release Nos. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR-NASDAQ-2010-110); 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR-NASDAQ-2008-102); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR-BX-2010-081).

<sup>18</sup> The Exchange notes that User fees as well as the distinctions based on professional and non-professional users have been previously filed with or approved by the Commission by Nasdaq and the New York Stock Exchange, Inc. (“NYSE”). See Securities Exchange Act Release Nos. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR-NASDAQ-2008-102).

<sup>19</sup> The Exchange notes that Enterprise fees have been previously filed with or approved by the Commission by Nasdaq, NYSE and the CTA/CQ Plans. See Nasdaq Rule 7047. Securities Exchange Act Release Nos. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR-NASDAQ-20140011); 70211 (August 15, 2013), 78 FR 51781 (August 21, 2013) (SR-NYSE-2013-58); 70010 (July 19, 2013) (File No. SR-CTA/CQ-2013-04).

<sup>20</sup> See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

<sup>21</sup> Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to separately purchase the top and last sale feeds from each of the BATS Exchanges.

<sup>22</sup> The monthly External Distributor fee is \$2,500 per month for EDGX Depth, \$2,500 per month for EDGA Depth, \$2,500 for BYX Depth, and \$5,000 for BZX Depth.

<sup>23</sup> See *supra* note 15. See also BATS Rule 11.22(d) and (g).

these individual data feeds of the BATS Exchanges is \$5,000 per month,<sup>24</sup> equal to the \$5,000 per month External Distributor Fee proposed for the BATS One Summary Feed. To ensure that vendors could compete with the Exchange by creating the same product as the BATS One Feed and selling it to their clients, the Exchange proposes to charge External Distributors an External Distributor fee that equals the combined External Distributor fees for each of the individual feeds listed above.

The Exchange also proposes to establish a New External Distributor Credit under which new External Distributors of the BATS One Summary Feed will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the BATS One Feed.<sup>25</sup> The New External Distributor Fee Credit will not be available to External Distributors of the BATS One Premium Feed. The Exchange does not believe the New External Distributor Credit would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

#### User Fees

In addition to Internal and External Distributor Fees, the Exchange proposes to charge those who receive the BATS One Feed from External Distributors different fees for both their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of \$10.00 per User for receipt of the BATS One Summary Feed or \$15.00 per User who elects to also

receive the BATS One Premium Feed. Non-Professional Users will be assessed a monthly fee of \$0.25 per user for the BATS One Summary Feed or \$0.50 per user where they elects to receive the BATS One Premium Feed.

External Distributors must count every Professional User and Non-Professional User to which they provide BATS One Feed data. Thus, the Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data.<sup>26</sup> Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with an External Distributor's distribution of the BATS One Feed, the Distributor should count as one User each unique User that the Distributor has entitled to have access to the BATS One Feed. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.

- The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to the BATS One Feed, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to the BATS One Feed (e.g., a single User has multiple passwords and user identifications), the External Distributor should report all of those methods as an individual User.

- External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.

- If an External Distributor entitles one or more individuals to use the same device, the External Distributor should include only the individuals, and not the device, in the count.

Each External Distributor will receive a credit against its monthly Distributor Fee for the BATS One Feed equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for the BATS One Feed. For example, an External Distributor will be subject to a

\$12,500 monthly Distributor Fee where they elect to receive the BATS One Premium Feed. If that External Distributor reports User quantities totaling \$12,500 or more of monthly usage of the BATS One Premium Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling \$11,500 of monthly usage, it will pay a net of \$1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above. In every case the Exchange will receive at least \$12,500 in connection with the distribution of the BATS One Feed (through a combination of the External Distribution Fee and per User Fees).

*Enterprise Fee.* The Exchange also proposes to establish a \$50,000 per month Enterprise Fee that will permit a recipient firm who receives the BATS Summary Feed portion of the BATS One Feed from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users and \$100,000 per month for recipient firms who elect to receive the BATS One Premium Feed. For example, if a recipient firm had 15,000 Professional Users who each receive the BATS One Summary Feed portion of the BATS One Feed at \$10.00 per month, then that recipient firm will pay \$150,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of \$50,000 for an unlimited number of Professional and Non-Professional Users for the BATS Summary Feed portion of the BATS One Feed. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls display of the BATS One Feed if it wishes such User to be covered by an Enterprise Fee rather than by per-User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users. The Enterprise Fee would be in addition to the applicable Distributor Fee.

#### Data Consolidation Fee

The Exchange also proposes to charge External Distributors of the BATS One Feed a separate Data Consolidation Fee, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. As stated above, the Exchange creates the BATS One Feed

<sup>24</sup> The monthly External Distributor fee is \$1,250 per month for EDGX Top and EDGX Last Sale, free for EDGA Top and EDGA Last Sale, \$1,250 for BYX Top and BYX Last Sale (as proposed herein), and \$2,500 for BZX Top and BZX Last Sale. See SR-EDGA-2015-09 and SR-EDGX-2015-09. See also the BZX Fee Schedule available at [http://www.batstrading.com/support/fee\\_schedule/bzx/](http://www.batstrading.com/support/fee_schedule/bzx/).

<sup>25</sup> The Exchange notes that just as a third party vendor could choose to offer special pricing in order to incentivize data recipients to perform necessary development and other work in order to receive and distribute a new data product, the Exchange has proposed pricing to incentivize data recipients to take and distribute the BATS One Feed.

<sup>26</sup> Requiring that every person or device to which they provide the data is counted by the Distributor receiving the BATS One Feed is similar to the NYSE Unit-of-Count Policy. The only difference is that the NYSE Unit-of-Count Policy requires the counting of users receiving a market data product through both internal and external distribution. Because the Exchange proposes to charge Usage Fees solely to recipient firms who's Users receive data from an external distributor and not through internal distribution, it only requires the counting of Users by Distributors that disseminate the BATS One Feed externally.

from data derived from the EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.<sup>27</sup> The Exchange notes that an External Distributor could create a competing product to the BATS One Feed based on these individual data feeds, or, alternatively, the applicable Top and Last Sale products offered by the Exchanges, and could charge its clients a fee that it believes reflects the value of the aggregation and consolidation function. The Exchanges [sic] believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. For these reasons, the Exchange believes that vendors could readily offer a product similar to the BATS One Feed on a competitive basis at a similar cost.

The Exchange does not propose to charge Internal Distributors the separate Data Consolidation Fee as the proposed Internal Distributor Fees are greater than the cost of subscribing to each of the underlying individual feed. As discussed above, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of \$10,000 per month, as compared to \$5,000, which is the total of the underlying feeds.<sup>28</sup> Each Internal Distributor shall pay a fee of \$15,000 per month where they elect to receive the BATS One Premium Feed, as compared to \$12,500, which is the total cost of the underlying depth feeds.<sup>29</sup> The increased cost of the BATS One Feed is designed to include the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. Therefore, the Exchange does not propose to charge Internal Distributors a separate Data Consolidation Fee.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>30</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>31</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and

other charges among its Members and other persons using its facilities. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

### Technical, Non-Substantive Changes

The Exchange believes that the non-substantive changes to its fee schedule are reasonable because they are non-substantive changes that are designed to amend any fee, nor alter the manner in which it assesses fees. These non-substantive, technical changes to the fee schedule are intended to streamline the naming convention of the Exchange's market data products, making the fee schedule clearer and less confusing for investors, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

### Definitions Applicable to Market Data Fees

The Exchange believes that the proposed definitions are reasonable because they are designed to provide greater transparency to Members with regard to how the Exchange assesses fees for market data. The Exchange notes that none of the proposed definitions are designed to amend any fee, nor alter the manner in which it assesses fees. The Exchange believes that Members would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would assess fees. These definitions are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Lastly, the proposed definitions are based on existing rules of the Nasdaq Stock Market LLC ("Nasdaq").<sup>32</sup>

<sup>32</sup> The proposed definition of "Distributor" is similar to Nasdaq Rule 7047(d)(1). The proposed definition of "Internal Distributor" is similar to Nasdaq Rule 7047(d)(1)(A). The proposed definition of "External Distributor" is similar to Nasdaq Rule 7047(d)(1)(B). The proposed definition of "Professional User" is similar to Nasdaq Rule 7047(d)(3)(A). The proposed definition of "Non-Professional User" is similar to Nasdaq Rule 7047(d)(3)(B).

### BYX Top and BYX Last Sale

The Exchange believes that its amended fees for BYX Last Sale and BYX Top are consistent with Section 6(b)(4) of the Act<sup>33</sup> because they provide for an equitable allocation of reasonable dues, fees, and other charges among its members and other recipients of Exchange data. The Exchange also believes the proposed fees for BYX Last Sale and BYX Top are reasonable and equitable in light of the benefits to data recipients. The Exchange believes that the decreased External Distributor Fees for BYX Last Sale and BYX Top are equitable and reasonable in that they result in a fee reduction for External Distributors. Subscribers to either BYX Top or BYX Last Sale would be able to also receive, upon request and at no additional cost, BYX Last Sale or BYX Top, as applicable. The Exchange believes that the proposed pricing model is simple and easy for data recipients to comply with, and thus, will result in a minimal additional administrative burden for data recipients who elect to receive both BYX Last Sale and BYX Top at no additional cost. BYX Last Sale and BYX Top are distributed and purchased on a voluntary basis, in that neither the Exchanges nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Lastly, the Exchange also believes that the proposed amendments to its fee schedule are reasonable and non-discriminatory because it [sic] will apply uniformly to all Members.

### BATS One Feed

The Exchange also believes that the proposed fees for the BATS One Feed are consistent with Section 6(b) of the Act,<sup>34</sup> in general, and Section 6(b)(4) of the Act,<sup>35</sup> in particular, in that it [sic] they provide for an equitable allocation of reasonable fees among Users and recipients of the data and are not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act<sup>36</sup> in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the

<sup>27</sup> See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

<sup>28</sup> See *supra* note 24.

<sup>29</sup> See *supra* note 22.

<sup>30</sup> 15 U.S.C. 78f.

<sup>31</sup> 15 U.S.C. 78f(b)(4).

<sup>33</sup> 15 U.S.C. 78f(b)(4).

<sup>34</sup> 15 U.S.C. 78f.

<sup>35</sup> 15 U.S.C. 78f(b)(4).

<sup>36</sup> 15 U.S.C. 78k-1.

availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,<sup>37</sup> which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fee structure on an equivalent basis. The BATS One Feed would be distributed and purchased on a voluntary basis, in that neither the BATS Exchanges nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. In addition, any customer that wishes to purchase one or more of the individual data feeds offered by the BATS Exchanges would be able to do so.

The Exchange has taken into consideration its affiliated relationship with EDGA, EDGX, and BZX in its design of the BATS One Feed to assure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the BATS One Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the BATS One Feed. Any entity that receives, or elects to receive, the individual data feeds would be able, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients with no greater cost than the Exchange.<sup>38</sup>

In addition, vendors and subscribers that do not wish to purchase the BATS One Feed may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the BATS One Feed. To enable such competition, the Exchange is offering the BATS One Feed on terms that a subscriber of those underlying feeds could offer a competing product if it so chooses.

The Exchange notes that the use of the BATS One Feed is entirely optional. Firms have a wide variety of alternative market data products from which to choose, including the Exchanges' own underlying data products, the Nasdaq and the NYSE proprietary data products described in this filing,<sup>39</sup> and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to the BATS One Feed further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute the BATS One Feed, prospective Users likely would not subscribe to, or would cease subscribing to, the BATS One Feed. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the BATS One Feed into the vendor's own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective Users would avail themselves of that lower cost and elect not to take the BATS One Feed.

The Exchange notes that the Commission is not required to undertake a cost-of-service or

underlying depth-of-book feeds as well as EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale on the same latency basis as the Exchange would receive the underlying depth-of-book feeds necessary to create the BATS One Feed, including the BATS One Summary Feed. *Id.*

<sup>39</sup> See *infra* note 53.

ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.<sup>40</sup>

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

*User Fees.* The Exchange believes that implementing the Professional and Non-Professional User fees for the BATS One Feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for the BATS One Feed is reasonable because it provides an additional method for retail investors to access the BATS One Feed data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly

<sup>40</sup> The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

<sup>37</sup> See 17 CFR 242.603.

<sup>38</sup> See BATS One Approval Order, *supra* note 11. The Exchange notes that a vendor can obtain the

available.<sup>41</sup> Offering the BATS One Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

In addition, the proposed fees are reasonable when compared to fees for comparable products offered by the NYSE, Nasdaq, and under the CTA and CQ Plans. Specifically, Nasdaq offers Nasdaq Basic, which includes best bid and offer and last sale data for Nasdaq and the FINRA/Nasdaq TRF, for a monthly fee of \$26 per professional subscriber and \$1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of \$350,000 per month for internal distribution to an unlimited number of professional users or \$365,000 per month for external distribution for up to 16,000 professional users, plus \$2 for each additional professional user over 16,000.<sup>42</sup> The NYSE offers BQT, which provides BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT. To obtain BQT, subscribers must purchase the [sic] each underlying data feed for a monthly fee of \$18 per professional subscriber and \$1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of \$365,000 per month for an unlimited number of professional users. The NYSE does not offer an enterprise license for non-professional users. The Exchange's proposed per-User Fees are lower than the NYSE's and Nasdaq's fees. In addition, the Exchange is proposing Professional and Non-Professional User fees and Enterprise Fees that are less than the fees currently charged by the CTA and CQ Plans. Under the CTA and CQ Plans, Tape A consolidated last sale and bid-ask data are offered together for a monthly fee of \$20-\$50 per device, depending on the number of professional subscribers, and \$1.00 per non-professional subscriber, depending on the number of non-professional subscribers.<sup>43</sup> A monthly enterprise fee of \$686,400 is available under which a U.S. registered broker-dealer may distribute data to an unlimited number of its own employees and its non-professional subscriber brokerage account customers. Finally, in contrast to Nasdaq UTP and the CTA and CQ Plans, the Exchange also will permit

enterprise distribution by a non-broker-dealer.

*Enterprise Fee.* The proposed Enterprise Fee for the BATS One Feed is reasonable as the fee proposed is less than the enterprise fees currently charged for underlying data feeds for NYSE BQT, Nasdaq Basic, and consolidated data distributed under the Nasdaq UTP and the CTA and CQ Plans. In addition, the Enterprise Fee could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of the BATS One Feed, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the BATS One Feed, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of users.

*Distributor Fee.* The Exchange believes that the proposed Distributor Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution.<sup>44</sup> The Exchange believes that the Distributor Fees for the BATS One Feed are reasonable and fair in light

of alternatives offered by other market centers. First, although the Internal Distributor fee is higher than those of competitor products, there are no User fees assessed for Users that receive the BATS One Feed data through an Internal Distributor, which results in a net cost that is lower than competitor products for many data recipients and will be easier to administer.

The proposed Distributor Fees for the BATS One Feed are also designed to ensure that vendors could compete with the Exchange by creating a similar product as the BATS One Feed. The Exchange believes that the proposed Distributor Fees are equitable and reasonable as it [sic] equals the combined fee of subscribing to each individual data feed of the BATS Exchanges, which have been previously published by the Commission.<sup>45</sup> Currently, an External Distributor that seeks to create a competing product to the BATS One Premium Feed<sup>46</sup> would need to purchase each of the depth of book products from the individual BATS Exchanges and then perform its own aggregation and consolidation functions.<sup>47</sup> The combined external distributor fees for these individual depth of book feeds of the BATS Exchanges is \$12,500 per month,<sup>48</sup> equal to the \$12,500 per month External Distributor Fee proposed for the BATS One Premium Feed. An External Distributor that seeks to create a competing product to the BATS One Summary Feed could alternatively subscribe to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale, and then perform their own aggregation and consolidation function. The combined external distributor fees for these individual data feeds of the BATS Exchanges is \$5,000 per month,<sup>49</sup> equal to the \$5,000 per month External Distributor Fee proposed for the BATS One Summary Feed. In addition, the Exchange believes it is reasonable to not charge External Distributors a Distribution Fee during their first three (3) months and does not believe this would inhibit a vendor from creating a competing product and offer a similar

<sup>45</sup> See *supra* notes 14 and 15.

<sup>46</sup> Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to separately purchase the top and last sale feeds from each of the BATS Exchanges.

<sup>47</sup> As discussed, the Exchange proposes to charge External Distributors a separate Data Consolidation Fee to reflect the value of the consolidation function performed by the Exchange.

<sup>48</sup> See *supra* note 22.

<sup>49</sup> See *supra* note 24.

<sup>41</sup> See, e.g., Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983) (establishing nonprofessional fees for CTA data); Nasdaq Rules 7023(b), 7047.

<sup>42</sup> See Nasdaq Rule 7047.

<sup>43</sup> See CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at <https://cta.nyxdata.com/CTA>.

<sup>44</sup> The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. See Nasdaq Rule 019(b); see also Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR-PHLX-2010-120); Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR-NASDAQ-2010-110); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR-BX-2010-081).



free period as the Exchange. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

#### Data Consolidation Fee

The Exchange believes that the proposed \$1,000 per month Data Consolidation Fee charged to External Distributors who receive the BATS One Feed is reasonable because it represents the value of the data aggregation and consolidation function that the Exchange performs. The Exchange also notes that its proposed \$1,000 per month Data Consolidation Fee is identical to an access fee charged by the NYSE for BQT, which is also designed to represent the value of the data aggregation function provided by the NYSE in constructing its BQT feed.<sup>50</sup>

The Exchange further believes the proposed Data Consolidation Fee is not designed to permit unfair discrimination because all External Distributors who subscribe to the BATS One Feed will be charged the same fee. The Exchange believes it is reasonable and not unfairly discriminatory to not charge Internal Distributors a separate Data Consolidation Fee as the proposed Internal Distributor Fees are greater than the cost of subscribing to each of the underlying individual feed. As discussed above, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of \$10,000 per month as compared to \$5,000, which is the total of the underlying feeds.<sup>51</sup> Each Internal Distributor shall pay a fee of \$15,000 per month where they elect to receive the BATS One Premium Feed as compared to \$12,500, which is the total cost of the underlying depth feeds.<sup>52</sup> The increased cost of the BATS One Feed is designed to include the value of the aggregation and consolidation function the Exchange performs in creating the BATS

One Feed. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee is reasonable and would not permit unfair discrimination.

In addition, a vendor could create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with the BATS One Feed pricing. The Exchange believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. Therefore, the Exchange believes the proposed pricing would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with BATS One Feed pricing as discussed further below.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

#### Technical, Non-Substantive Changes

The proposed name changes to the Exchange's market data products will not result in any burden on competition. The proposed amendments are not designed to address any competitive issues, but rather provide consistency amongst the naming conventions used for the Exchange market data products, resulting in additional clarity and transparency to Members, Users, and the investing public regarding the Exchange's market data products. The Exchange notes that none of the proposed non-substantive changes are designed to amend any fee, nor alter the manner in which it assesses fees. These non-substantive, technical changes to the fee schedule are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion.

#### Definitions Applicable to Market Data Fees

The proposed definitions applicable to market data fees will not result in any burden on competition. The proposed definitions are not designed to amend

any fee, nor alter the manner in which it assesses fees. The Exchange believes that Members would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would assess fees for market data. These definitions are intended to make the Fee Schedule clearer and less confusing for investors and are not designed to have a competitive impact.

#### BYX Top and BYX Last Sale

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price BYX Last Sale and BYX Top are constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, BYX Last Sale and BYX Top compete with a number of alternative products. For instance, BYX Last Sale and BYX Top do not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks ("ECN") that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to BYX last sale prices and top-of-book quotations though integrated with the prices of other markets on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to

<sup>50</sup> See Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

<sup>51</sup> See *supra* note 24.

<sup>52</sup> See *supra* note 22.

attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to BYX Last Sale and BYX Top, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

#### BATS One Feed

The BATS One Feed will enhance competition because it not only provides content that is competitive with the similar products offered by other exchanges, but will provide pricing that is competitive as well. The BATS One Feed provides investors with an alternative option for receiving market data and competes directly with similar market data products currently offered by the NYSE and Nasdaq.<sup>53</sup> As

<sup>53</sup> See Nasdaq Basic, <http://www.nasdaqtrader.com/Trader.aspx?id=NASDAQbasic> (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility ("TRF")); Nasdaq NLS Plus, <http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus> (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR-NYSE-2014-40) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, To Establish the NYSE Best Quote & Trades ("BQT") Data Feed); <http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades> (last visited May 27, 2014)

previously stated, the fees for the BATS One Feed are significantly lower than alternative exchange products. The BATS One Feed is less expensive per professional user and more than 85% less expensive for an enterprise license for professional users (50% less for non-professional users) when compared to a similar competitor exchange product, offering firms a lower cost alternative for similar content.

Although the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the BATS One Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed BATS One Feed. Any entity that receives, or elects to receive, the underlying data feeds would be able to, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients at a similar cost.<sup>54</sup>

The proposed pricing the Exchange would charge clients for the BATS One Feed compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The pricing the Exchange would charge for the BATS One Feed would not be lower than the cost to a vendor of receiving the underlying data feeds. The pricing the Exchange would charge clients for the BATS One Feed compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The Distributor Fees that the Exchange intends to propose for the BATS One Feed would not be less than the combined fee of subscribing to each individual data feed.<sup>55</sup> In addition, the

(data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

<sup>54</sup> See BATS One Approval Order, *supra* note 11.

<sup>55</sup> The combined external distribution fee for the individual depth of book data feeds of the BATS Exchanges is \$12,500.00 per month. The monthly External Distributor fee is \$2,500 per month for the EDGX Depth, \$2,500 per month for the EDGA Depth, \$2,500 for BYX Depth, and \$5,000 for BZX Depth. The combined external distribution fee for the individual top and last sale data feed of the BATS Exchanges is \$5,000.00 per month. The monthly External Distributor fee is \$1,250 per month for EDGX Top and EDGX Last Sale, free for

Exchange believes that not charging External Distributors a Distribution Fee during their first three (3) months would not impede a vendor from creating a competing product. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period and offer a competing product on a similar basis as the Exchange.

The Exchange further believes that its proposed monthly Data Consolidation Fee would be pro-competitive because it is identical to a similar fee charged by the NYSE for its BQT feed and a vendor could create a competing product, perform a similar aggregating and consolidating function, and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product. The Exchanges believe that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. For these reasons, the Exchange believes the proposed pricing, including the New External Distributor Fee Credit, would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with BATS One Feed pricing.

Finally, the Exchange notes that there is already actual competition for products similar to the BATS One Feed. The NYSE offers BQT which provides BBO and last sale information for the NYSE, NYSE Arca Equities, Inc. and NYSE MKT LLC.<sup>56</sup> Nasdaq already offers Nasdaq Basic, a filed market data product, and through its affiliate, offers NLS Plus which provides a unified view

EDGA Top and EDGA Last Sale, \$1,250 for BYX Top and BYX Last Sale (as proposed herein), and \$2,500 for BZX Top and BZX Last Sale. See SR-EDGA-2015-09 and SR-EDGX-2015-09. See also the BZX Fee Schedule available at [http://www.batstrading.com/support/fee\\_schedule/bzx/](http://www.batstrading.com/support/fee_schedule/bzx/).

<sup>56</sup> See *supra* note 53.

of last sale information similar to the BATS One Feed.<sup>57</sup> The existence of these competing data products demonstrates that there is ample, existing competition for products such as the BATS One Feed and the fees associated by such products is constrained by competition.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to the BATS One Feed, including the existing underlying feeds, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>58</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>59</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BYX-2015-09 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-BYX-2015-09. 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 BYX. 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-BYX-2015-09 and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>60</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-03655 Filed 2-23-15; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>60</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-74295; File No. SR-EDGA-2015-11]

**Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 8.15 Entitled "Imposition of Fines for Minor Violation(s) of Rules"**

February 18, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 5, 2015, EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange filed a proposal to amend Rule 8.15 entitled "Imposition of Fines for Minor Violation(s) of Rules." The text of the proposed rule change is available at the Exchange's Web site at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>57</sup> *Id.*

<sup>58</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>59</sup> 17 CFR 240.19b-4(f)(2).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 8.15 in order to make it substantively identical to the corresponding rules on BATS Exchange, Inc. ("BATS") and BATS Y-Exchange, Inc. ("BYX"), as further described below. Last year, the Exchange and its affiliate EDGX Exchange, Inc. ("EDGX") received approval to effect a merger (the "Merger") of the Exchange's parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BATS and BYX (together with BATS, BYX, EDGX and EDGA, the "BGM Affiliated Exchanges").<sup>5</sup> In the context of the Merger, the BGM Affiliated Exchanges are working to align certain rules, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to amend Rule 8.15 in order to make it substantively identical to corresponding rules on BATS, BYX, and EDGX.<sup>6</sup>

Currently, paragraph (d) of Interpretation and Policy to Rule 8.15 includes Rule 2.5 Interpretation .04: Firm Element of Continuing Education Requirement (the "CE Rule") under the list of Exchange rule violations and recommended fine schedule pursuant to Rule 8.15 related to the imposition of fines for minor violations of rules (the "MRVP"). The Exchange, however, has no specific reference to the firm element of the continuing education requirements under the CE Rule. Further, BATS and BYX are proposing to adopt rules that are substantively identical to the Exchange's MRVP, except that BATS and BYX are not proposing to add a provision covering the CE Rule.<sup>7</sup> As such, the Exchange is proposing to eliminate paragraph (d) of Interpretation and Policy .01 to Rule 8.15.

The Exchange is also proposing to amend Rule 8.15(a). Currently, Rule 8.15(a) provides that, for the purposes of imposing fines pursuant to Interpretation .02 of Rule 4.2, the Exchange may aggregate individual violations of particular rules and treat

such violations as a single offense, provided that such aggregation is based upon a comprehensive automated surveillance program. The Exchange has never aggregated violations under this provision and does not anticipate doing so in the future due to the content of Interpretation .02 of Rule 4.2, which could not, because of its nature, be based on a comprehensive automated surveillance program. Interpretation and Policy .02 of Rule 4.2 is related to the requirement to furnish Exchange-related order, market and transaction data. As the Exchange does not currently require Members to provide such information and because compliance with a requirement to provide data would not likely be reviewed based on an automated surveillance (though surveillance would likely be performed on such data), the Exchange believes the reference to this provision in Rule 8.15 is no longer necessary. Based on the foregoing, and in order to conform rules across each of the BGM Affiliated Exchanges, the Exchange is proposing to remove this provision from Rule 8.15(a).

Finally, the Exchange is proposing to make several non-substantive changes to Rule 8.15. Specifically, in coordination with the elimination of paragraph (d) of Interpretation and Policy .01 to Rule 8.15, the Exchange is proposing to make several corresponding and non-substantive changes to the numbering of the rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in that it is designed promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. Specifically, the Exchange believes that the proposed changes to Rule 8.15(a) and the deletion of paragraph (d) of Interpretation and Policy .01 to Rule 8.15 contribute to the protection of investors and the public interest by removing unnecessary language from Exchange Rules and correcting certain cross-references therein. The Exchange believes that these changes will help to make Exchange Rules clearer and avoid confusion for all participants on the Exchange.

Further, as mentioned above, the proposed rule changes, combined with the planned filings for BATS, BYX, and

EDGX,<sup>10</sup> would allow the BGM Affiliated Exchanges to provide a consistent set of rules as it relates to the imposition of fines for minor violations of rules across each of the exchanges. Consistent rules, in turn, will simplify the application of the Exchange's regulatory program for Members of the Exchange that are also participants on BATS, BYX, and/or EDGX. The proposed rule change would provide greater harmonization between rules of similar purpose on the BGM Affiliated Exchanges, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

Finally, the Exchange believes that the non-substantive changes described above will contribute to the protection of investors and the public interest by helping to avoid confusion with respect to Exchange rules by creating a consistent numbering system in its Rules.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the act. To the contrary, allowing the Exchange to implement substantively identical rules related to the imposition of fines for minor violations of rules across each of the BGM Affiliated Exchanges does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BATS, BYX, and EDGX rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members of the BGM Affiliated Exchanges and an enhanced ability of the BGM Affiliated Exchanges to fairly and efficiently regulate members, which will further enhance competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

<sup>5</sup> See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-43; SR-EDGA-2013-34).

<sup>6</sup> The Exchange understands that BATS, BYX, and EDGX intend to file proposed rule changes with the Commission to adopt substantively identical rules.

<sup>7</sup> The Exchange notes that BATS and BYX do not currently and are not going to propose to include a provision to cover the CE Rule currently included in the Exchange's MRVP.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See supra notes 6 and 7.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph of Rule 19b-4(f)(6) thereunder.<sup>12</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement is consistent with the protection of investors and the public interest because it will allow the Exchange to have consistent rules related to minor violations across each of the BGM Affiliated Exchanges, which it believes will both more consistently and effectively regulate members of the BGM Affiliated Exchanges as well as reduce the regulatory burden on Members of the Exchange that are also members of EDGX, BYX and/or BZX. The Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-EDGA-2015-11 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-EDGA-2015-11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-EDGA-2015-11 and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Brent J. Fields,**

Secretary.

[FR Doc. 2015-03668 Filed 2-23-15; 8:45 am]

**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74313; File No. SR-C2-2015-003]

#### Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Rule 6.15

February 19, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on February 19, 2015, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend a pilot program related to Rule 6.15 (Obvious Error and Catastrophic Errors). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4.

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

current rule applicable to obvious errors. Interpretation and Policy .08 to Rule 6.15, explained in further detail below, is currently operating on a pilot program set to expire on February, 20 2015. The Exchange proposes to extend the pilot program to October 23, 2015.

On April 8, 2013, the Commission approved, on a pilot basis, amendments to Exchange Rule 6.15 that stated that options executions will not be adjusted or nullified if the execution occurs while the underlying security is in a limit or straddle state as defined by the Plan. Under the terms of this current pilot program, though options executions will generally not be adjusted or nullified while the underlying security is in a limit or straddle state, such executions may be reviewed by the Exchange should the Exchange decide to do so under its own motion.

Pursuant to a comment letter filed in connection with the order approving the establishment of the pilot, the Exchange committed to submit monthly data regarding the program. In addition, the Exchange agreed to submit an overall analysis of the pilot in conjunction with the data submitted under the Plan and any other data as requested by the Commission. Pursuant to a rule filing, approved on April 3, 2014, each month, the Exchange committed to provide the Commission, and the public, a dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange. The Exchange will continue to provide the Commission with this data on a monthly basis from February 2015 through the end of the pilot. For each trade on the Exchange, the Exchange will provide (a) the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle and limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's limit or straddle state compared to the last available option price as reported by OPRA before the start of the limit or straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the limit or straddle state (or halt if applicable) is 30% away from

the price before the start of the limit or straddle state.

In addition, the Exchange will provide to the Commission and the public, no later than May 29, 2015, assessments relating to the impact of the operation of the obvious error rules during limit and straddle states including: (1) An evaluation of the statistical and economic impact of limit and straddle states on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the straddle and limit states are problematic.

The Exchange is now proposing to extend the pilot period to October 23, 2015. The Exchange believes the benefits to market participants from this provision should continue on a pilot basis. The Exchange continues to believe that adding certainty to the execution of orders in limit or straddle states will encourage market participants to continue to provide liquidity to the Exchange, and, thus, promote a fair and orderly market during these periods. Barring this provision, the provisions of Rule 6.15 would likely apply in many instances during limit and straddle states. The Exchange believes that continuing the pilot will protect against any unanticipated consequences in the options markets during a limit or straddle state. Thus, the Exchange believes that the protections of current Rule should continue while the industry gains further experience operating the Plan.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>3</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>4</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>5</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange further believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a limit or straddle state from certain aspects of the Exchange Rule 6.15. The Exchange believes the application of the current rule will be impracticable given the lack of a reliable NBBO in the options market during limit and straddle states, and that the resulting actions (*i.e.*, nullified trades or adjusted prices) may not be appropriate given market conditions. Extension of this pilot would ensure that limit orders that are filled during a limit or straddle state would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Thus, the Exchange believes that the protections of the pilot should continue while the industry gains further experience operating the Plan.

## B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the pilot, the proposed rule change will allow for further analysis of the pilot and a determination of how the pilot shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant

<sup>5</sup> *Id.*

burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>7</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan to Address Extraordinary Market Volatility, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>8</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-C2-2015-003 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-C2-2015-003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2015-003, and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015-03821 Filed 2-23-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74293; File No. SR-BATS-2015-12]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 8.15 Entitled "Imposition of Fines for Minor Violation(s) of Rules"

February 18, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 5, 2015, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 8.15 entitled "Imposition of Fines for Minor Violation(s) of Rules." The text of the proposed rule change is available at the Exchange's Web site at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>8</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 8.15 in order to make it substantively identical to the corresponding rules on EDGX Exchange, Inc. ("EDGX") and EDGA Exchange, Inc. ("EDGA"), as further described below. Earlier this year, the Exchange and its affiliate, BATS Y-Exchange, Inc. ("BYX"), received approval to effect a merger (the "Merger") of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX, and EDGA (together with BZX, BYX and EDGX, the "BGM Affiliated Exchanges").<sup>5</sup> In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system and regulatory functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to amend Rule 8.15 in order to make the rule substantively identical to corresponding rules on EDGA and EDGX related to minor violations of exchange rules in order to provide a consistent regulatory approach across each of the BGM Affiliated Exchanges.

Currently, Rule 8.15(a) provides that, in lieu of commencing a disciplinary proceeding as described in Rules 8.1 through 8.13, the Exchange may, subject to the requirements set forth in this Rule, impose a fine, not to exceed \$2,500, on any Member, associated person of a Member, or registered or non-registered employee of a Member, for any violation of a Rule of the Exchange, which violation the Exchange shall have determined is minor in nature. The Exchange is proposing to add language in order to make Rule 8.15(a) and Interpretation and Policy .01 to Rule 8.15 identical to the corresponding EDGA and EDGX rules.<sup>6</sup> Specifically, the Exchange is proposing that the Exchange may, if no exceptional circumstances are present, impose a fine based upon a determination that there exists a pattern or practice of violative conduct. As proposed, the Exchange also may aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations

<sup>5</sup> See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

<sup>6</sup> See EDGX Rule 8.15(a) and Interpretation and Policy .01 to Rule 8.15 and EDGA Rule 8.15(a) and Interpretation and Policy .01 to Rule 8.15.

resulted from a single systemic problem or cause that has been corrected.

Currently, under Interpretation and Policy .01 to Rule 8.15, the Exchange fines individuals \$100, \$300, and \$500 and Member firms \$500, \$1,000, and \$2,500 for their first, second, and third time fined under Rule 8.15 within a rolling 12-month period, respectively, for the following violations of Exchange rules: (a) Rule 4.2 and Interpretation and Policy thereunder requiring the submission of responses to Exchange requests for trading data within a specified time period; (b) Rule 11.19 requirement to identify short sale orders as such; and (c) Rule 11.20 requirement to comply with locked and crossed market rules. The Exchange is proposing to add two additional instances to the fine structure described above. These additional instances include: (1) Rule 3.5 Advertising Practices; and (2) Rule 12.11 Interpretation and Policy .01 and Exchange Act Rule 604—Failure to properly display limit orders.<sup>7</sup>

The Exchange is also proposing to make several non-substantive changes to Interpretation and Policy .01 to Rule 8.15. First, the Exchange is proposing to change the numbering within the rule to reflect the additions described above. Second, the Exchange is proposing to change the phrase "limit orders" in paragraph (e) of Interpretation and Policy .01 to Rule 8.15 to "quotations." The Exchange believes that this change is non-substantive because, in this instance, the terms limit orders and quotations are interchangeable. Paragraph (e) is referring to the obligation of a Market Maker under Rule 11.8 to maintain continuous liquidity of both buy and sell orders, which are referred to as quotes or quotations in Rule 11.8, at certain prices. Based on Exchange functionality, the only way to enter priced orders that could meet such quotation obligations would be through use of limit orders. As such, the Exchange believes that the proposed change is non-substantive, makes the rule more clear, and more accurately reflects the language used in Exchange Rule 11.8. Further, the change would

<sup>7</sup> The Exchange notes that these proposed changes would make the Exchange's Rule 8.15, with the exception of current Rule 8.15(a) [sic] and paragraph (d) [sic] of Interpretation and Policy .01 to Rule 8.15 related to the rules of the Exchange's options platform ("BATS Options"), substantively identical to the corresponding EDGA and EDGX rules based on filings SR-EDGA-2015-11 and SR-EDGX-2015-10. Such filings propose to remove paragraph (d) of Interpretation and Policy .01 to both EDGA and EDGX rules 8.15. The Exchange also notes that BYX intends to file a proposal very similar to this proposal that will align the rules related to fines for minor violation of exchange rules across each of the BGM Affiliated Exchanges.

make the rule text identical to that of EDGA and EDGX.

2. Statutory Basis

The Exchange believes that the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. As mentioned above, the proposed rule changes, combined with the planned filing for BYX,<sup>10</sup> would allow the BGM Affiliated Exchanges to provide a consistent set of rules as it relates to the imposition of fines for minor violations of rules across each of the exchanges. Consistent rules, in turn, will simplify the regulatory requirements for Members of the Exchange that are also participants on BYX, EDGA, and/or EDGX. The proposed rule change would provide greater harmonization between rules of similar purpose on the BGM Affiliated Exchanges, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

Specifically, the changes to Rule 8.15(a) and the addition of new paragraphs (d) and (e) to Interpretation and Policy .01 to Rule 8.15 will provide the Exchange with additional ways to handle related minor violations as well as providing the Exchange with the ability to handle other rule violations which it believes to be minor under Rule 8.15. The Exchange believes that, in addition to the benefits to Members described above, the proposal will enhance the Exchange's ability to efficiently regulate its Members, meaning that the proposed rule change is equitable and will promote fairness in the market place.

Further, the Exchange believes that the proposal is consistent with Sections

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See supra note 7.



6(b)(1) and 6(b)(6) of the Act<sup>11</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. The Exchange also believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of a particular violation.

Finally, the Exchange believes that the non-substantive changes discussed above will contribute to the protection of investors and the public interest by helping to avoid confusion with respect to Exchange rules.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the act. To the contrary, allowing the Exchange to implement substantively identical rules related to the imposition of fines for minor violations of rules across each of the BGM Affiliated Exchanges does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BYX, EDGA, and EDGX rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members of the BGM Affiliated Exchanges and an enhanced ability of the BGM Affiliated Exchanges to fairly and efficiently regulate members, which will further enhance competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and paragraph of Rule 19b-4(f)(6) thereunder.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2015-12 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File No. SR-BATS-2015-12. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments

received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BATS-2015-12 and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2015-03664 Filed 2-23-15; 8:45 am]

**BILLING CODE 8011-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-74292; File No. SR-Phlx-2015-14]

#### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule Under Section VIII With Respect to Execution and Routing of Orders in Securities Priced at \$1 or More per Share**

February 18, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 3, 2015, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Exchange's Pricing Schedule under Section VIII, entitled "NASDAQ OMX PSX FEES," with respect to execution and routing of orders in securities priced at \$1 or more per share.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4.

<sup>11</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of the proposed rule change is to amend certain fees for order execution and routing applicable to the use of the order execution and routing services of the NASDAQ OMX PSX System ("PSX") by member organizations for all securities traded at \$1 or more per share, as well as clarify that consolidated volume does not include the date of the annual reconstitution of the Russell Investments Indexes.

Specifically, the charge to a member organization entering an order that executes in PSX will increase from: (i) \$0.0024 to \$0.0026 per share executed for shares executed in The NASDAQ Stock Market LLC ("Nasdaq")-listed securities; (ii) \$0.0024 to \$0.0025 per share executed for shares executed in New York Stock Exchange ("NYSE")-listed securities; and (iii) \$0.0024 to \$0.0026 per share executed for shares in securities listed on exchanges other than Nasdaq or NYSE. The Exchange believes that these increases better reflect the costs in providing rebates to members.

Additionally, the Exchange proposes to clarify that for purposes of calculating consolidated volume and the extent of a member's trading activity, expressed as a percentage of, or ratio to, consolidated volume, the date of the annual reconstitution of the Russell Investments Indexes ("Russell Reconstitution") will be excluded from both total consolidated volume and the member's trading activity. This change is consistent with the practices of both Nasdaq and the NASDAQ OMX BX, Inc. ("BX") exchanges.

Also, the Exchange proposes to make a few clarifications in the Exchange's Pricing Schedule. Specifically, in section (a)(2) of "Order Execution and Routing in All Securities" under "VIII.

NASDAQ OMX PSX FEES", the Exchange proposes to replace the word "None" with "\$0.0000 per share executed at NASDAQ OMX BX". The Exchange believes this proposed change will serve to enhance market participant's understanding that there is no charge for shares executed at BX and reduce any possible confusion in these instances. Additionally, in this same section for both XDRK and XCST orders, the first column will clarify that the amounts in the accompanying column are charges for executions on a venue other than the NASDAQ OMX PSX System, rather than the current practice of simply indicating that they are a "charge or credit" to a member organization entering such orders. Finally, the description of the charge to members entering an XDRK order is changed to "\$0.0007 per share executed"; and the reference to "shares executed at a venue other than NASDAQ OMX BX" is deleted since an XDRK order cannot execute at BX. These clarifications are all intended to reduce confusion and make the fee schedule easier to understand.

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>3</sup> in general, and furthers the objectives of Sections 6(b)(4) and (b)(5) of the Act<sup>4</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange is proposing modest increases to the charges that a member organization entering an order that executes in PSX from: (i) \$0.0024 to \$0.0026 per share executed for shares executed in Nasdaq-listed securities; (ii) \$0.0024 to \$0.0025 per share executed for shares executed in NYSE-listed securities; and (iii) \$0.0024 to \$0.0026 per share executed for shares in securities listed on exchanges other than Nasdaq or NYSE. The Exchange believes that these modest increases are reasonable because they reflect the Exchange's need to adjust its credits and fees in response to the costs and benefits provided by the Exchange. Additionally, these modest increases are reasonable since by staggering increases, the Exchange is able to offer reduced rates in some tapes while balancing the need to fund rebates and operational costs.

The Exchange believes that the proposed changes are consistent with an equitable allocation of fees and are not unfairly discriminatory because they apply to all member organizations that enter orders that execute in PSX. The Exchange also believes that they are consistent with equitable allocation of fees and are not unfairly discriminatory because they apply to all member organizations that enter orders that execute in PSX.

The Exchange is also proposing to clarify that for purposes of calculating consolidated volume and the extent of a member's trading activity, expressed as a percentage of, or ratio to, consolidated volume, the date of the Russell Reconstitution will be excluded from both total consolidated volume and the member's trading activity. The Exchange believes that this clarification is reasonable because it is consistent with the practices at both Nasdaq and the BX exchanges and will reduce confusion concerning the Russell Reconstitution.

The Exchange believes that the proposed changes are consistent with an equitable allocation of fees and are not unfairly discriminatory because trading volumes on the date of the Russell Reconstitution are generally far in excess of volumes on other days during the month. As a result, the trading activity of members that are regular daily participants in PSX, expressed as a percentage of consolidated volume, is likely to be lower than their percentage of consolidated volume on other days during the month. Therefore, including the date of the Russell Reconstitution in calculations of consolidated volume would likely make it more difficult for members to achieve particular volume levels during the month. Accordingly, excluding the date of the Russell Reconstitution from these calculations will diminish the likelihood of a *de facto* price increase from occurring because a member is not able to reach a volume percentage on that date that typically reaches on other trading days during the month. Moreover, excluding the date is very unlikely to result in a price increase for any members, since a member that was not, on other days during the month, trading in PSX at volume levels that would allow it to qualify for rebate tiers, would be unlikely to achieve percentage volume levels on the date of the Russell Reconstitution that would increase its overall monthly percentage to the required levels, even if it was very active on that date.

Finally, the Exchange believes that the remaining changes to the Pricing Schedule are reasonable because they

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(4) and (5).

are intended to clarify and reduce confusion through the clarification as to what is a charge or credit, the clarification that there is no charge for certain orders executed at BX, as well as to clarify through the removal of unnecessary language that may add confusion to the Pricing Schedule. The Exchange also believes that these changes are consistent with an equitable allocation of fees and are not unfairly discriminatory because they do not impact fees and serve only to clarify and reduce possible confusion.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended.<sup>5</sup> The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the modest increases to the charges assessed are intended to allow the Exchange to help offset its costs in providing rebates to members. Because there are numerous competitive alternatives to PSX, it is likely the Exchange would lose market share and money as a result of changes if they do not reflect costs.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>6</sup> the Exchange has designated this proposal as establishing or changing

a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2015-14 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2015-14. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also

will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2015-14, and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2015-03663 Filed 2-23-15; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-74283; File No. SR-EDGA-2015-09]

### **Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for EDGA Top, EDGA Last Sale, and the BATS One Feed**

February 18, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 3, 2015, EDGA Exchange, Inc. ("EDGA" 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 Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange filed a proposal to amend the fee schedule to establish fees for EDGA Top, EDGA Last Sale, and the

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> 15 U.S.C. 78f(b)(8).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

BATS One Feed, as well as add definitions for terms that apply to market data fees and make certain technical, non-substantive changes.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend its fee schedule to establish fees for EDGA Top, EDGA Last Sale, and the BATS One Feed, as well as add definitions for terms that apply to market data fees and make certain technical, non-substantive changes.

#### Technical, Non-Substantive Changes

The Exchange proposes the following technical, non-substantive amendments to its fee schedule regarding its existing market data fees. First, the Exchange proposes to group all fees for its market data products under a section entitled, "Market Data Fees." Second, the Exchange proposes to rename the

section entitled "EdgeBook Depth Fees" as the "EDGA Depth" to align with a name change within Rule 13.8 that was recently filed with the Commission.<sup>5</sup> Third, the Exchange proposes to amend the name of the section entitled "EdgeBook Attributed Fees" as "EDGA Depth Attributed" to align with the naming convention of the Exchange's other market data products: EDGA Depth, EDGA Top, and EDGA Last Sale. Fourth, the Exchange proposes to relocate the section entitled "EDGX Historical Depth Data" within the new section on market data fees. The Exchange also proposes to replace references to "EdgeBook Depth A" with "EDGA Depth" to align with the name change within Rule 13.8 discussed above.

#### Definitions Applicable to Market Data Fees

The Exchange proposes to include in its fee schedule the following defined terms that relate to the Exchange's market data fees. The proposed definitions are designed to provide greater transparency with regard to how the Exchange assesses fees for market data. The Exchange notes that none of the proposed definitions are designed to amend any fee, nor alter the manner in which it assesses fees.

First, the Exchange proposes to amend and relocate its current definition of a "Distributor" contained in its fee schedule. A Distributor is currently defined as "any entity that receives a market data feed directly from the Exchange or indirectly through another entity and then distributes it either internally (within that entity) ("Internal Distributor") or externally (outside that entity) ("External Distributor"). All Distributors shall execute a Market Data Vendor Agreement with Direct Edge, Inc., acting on behalf of EDGA Exchange, Inc." As amended, a "Distributor" will be defined as "any entity that receives an Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party."<sup>6</sup> In turn, an Internal Distributor and External Distributor will be separately defined. An Internal Distributor will be defined as a "Distributor that receives the Exchange Market Data product and then distributes that data to one or more

Users within the Distributor's own entity."<sup>7</sup> An External Distributor will be defined as a "Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity."<sup>8</sup>

Secondly, the Exchange proposes to add a definition of "User" to its fee schedule. A User will be defined as a "natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data." For purposes of its market data fees, the Exchange will distinguish between "Non-Professional Users" and "Professional Users." Specifically, a Non-Professional User will be defined as "a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association; any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that will require registration or qualification if such functions were performed for an organization not so exempt."<sup>9</sup> A Professional User will be defined as "any User other than a Non-Professional User."<sup>10</sup>

#### EDGA Top and EDGA Last Sale

The Exchange will begin to offer two new data feeds that are also identical to data feeds currently available on the BATS Exchange, Inc. ("BZX") and BATS Y-Exchange, Inc. ("BYX" collectively, with BZX, "BATS"): EDGA Last Sale and EDGA Top.<sup>11</sup> EDGA Last Sale will provide real-time, intraday trade information, including price, volume and time of executions based on orders entered into the System.<sup>12</sup> EDGA

<sup>7</sup> The proposed definition of "Internal Distributor" is similar to Nasdaq Rule 7047(d)(1)(A).

<sup>8</sup> The proposed definition of "External Distributor" is similar to Nasdaq Rule 7047(d)(1)(B).

<sup>9</sup> The proposed definition of "Professional User" is similar to Nasdaq Rule 7047(d)(3)(A).

<sup>10</sup> The proposed definition of "Non-Professional User" is similar to Nasdaq Rule 7047(d)(3)(B).

<sup>11</sup> See *supra* note 5. See also BATS Rule 11.22(d) and (g).

<sup>12</sup> The term "System" is defined as "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away." See Exchange Rule 1.5(cc).

<sup>5</sup> See Securities Exchange Act Release No. 73990 (January 5, 2015) (SR-EDGA-2014-35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Top and Last Sale Data Fees).

<sup>6</sup> The proposed definition of "Distributor" is similar to Nasdaq Rule 7047(d)(1).

Last Sale will not include quotation information. EDGA Top will include top of book quotations and last sale execution information based on orders entered into the System. The quotations made available via EDGA Top will provide an aggregated size and do not indicate the size or number of individual orders at the best bid or ask.

At this time, the Exchange does not intend to charge fees associated with the receipt of EDGA Last Sale or EDGA Top. Because the Exchange does not propose to charge per User fees for either EDGA Last Sale or EDGA Top, it will not require an External Distributor of EDGA Last Sale or EDGA Top to count, classify (e.g., professional or non-professional) or report to the Exchange information regarding the customers to which they provide the data. In addition, end Users will not have to pay the Exchange for EDGA Last Sale or EDGA Top, nor will end Users be required to enter into contracts with the Exchange. The Exchange believes that the proposed pricing model is simple and easy for data recipients to comply with, and thus, will result in a minimal additional administrative burden for data recipients with respect to EDGA Last Sale and EDGA Top. The Exchange will submit a proposed rule change to the Commission should it determine to charge fees, such as Distributor Fees or User Fees, associated with EDGA Last Sale or EDGA Top.

#### BATS One Feed

The Commission recently approved a proposed rule change by the Exchange to establish a new market data product called the BATS One Feed.<sup>13</sup> The BATS One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (“BBO”) of all displayed orders for securities traded on EDGA and its affiliated exchanges.<sup>14</sup>

<sup>13</sup> See Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the BATS One Feed) (“BATS One Approval Order”).

<sup>14</sup> EDGA’s affiliated exchanges are BZX, BYX, and EDGX Exchange, Inc. (“EDGX”, together with EDGA, BZX, and BYX, the “BATS Exchanges”). On January 31, 2014, Direct Edge Holdings LLC (“DE Holdings”), the former parent company of the Exchange and EDGX, completed its business combination with BATS Global Markets, Inc., the parent company of BATS and BYX. See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-43, SR-EDGA-2014-34). Upon completion of the business combination, DE Holdings and BATS Global Markets, Inc. each became intermediate holding companies, held under a single new holding company. The new holding company,

and for which the BATS Exchanges report quotes under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan.<sup>15</sup> The BATS One Feed also contains the individual last sale information for the BATS Exchanges (collectively with the aggregate BBO, the “BATS One Summary Feed”). In addition, the BATS One Feed contains optional functionality which will enable recipients to elect to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels for all securities that are traded on the BATS Exchanges in addition to the BATS One Summary Feed (“BATS One Premium Feed”). For each price level on one of the BATS Exchanges, the BATS One Premium Feed will include a two-sided quote and the number of shares available to buy and sell at that particular price level.

The Exchange uses the following data feeds to create the BATS One Summary Feed and the BATS One Premium Feed, each of which is available to other vendors: EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, and each of which have been previously published by the Commission.<sup>16</sup> A vendor that wishes to create a product like the BATS One Summary Feed could instead subscribe to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale.<sup>17</sup> The BATS Exchanges are the exclusive distributors of these individual data feeds from which certain data elements are taken to create the BATS One Feed as well as the feeds that a vendor may use to create a product like the BATS One Summary Feed. By contrast, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that comprises the BATS One Feed. Any entity that receives, or elects to received [sic], the individual data feeds or the feeds that may be used to create a product like the BATS One

formerly named “BATS Global Markets Holdings, Inc.,” changed its name to “BATS Global Markets, Inc.”

<sup>15</sup> The Exchange understands that each of the BATS Exchanges will separately file substantially similar proposed rule changes with the Commission to implement fees for the BATS One Feed.

<sup>16</sup> See Securities Exchange Act Release Nos. 66864 (April 26, 2012), 77 FR 26064 (May 2, 2012) (SR-EDGX-2012-14); 66863 (April 26, 2012), 77 FR 26059 (May 2, 2012) (SR-EDGA-2012-15); 69936 (July 3, 2013), 78 FR 41483 (July 10, 2013) (SR-BATS-2013-39); 69935 (July 3, 2013), 78 FR 47447 (July 10, 2013) (SR-BYX-2013-023). See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

<sup>17</sup> See *supra* note 5. See also BZX and BYX Rules 11.22(d) and (g).

Feed would be able to, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients.<sup>18</sup>

The Exchange proposes to amend its fee schedule to incorporate fees related to the BATS One Feed. The Exchange proposes to charge different fees to vendors depending on whether the vendor elects to receive: (i) The BATS One Summary Feed; or (ii) the optional BATS One Premium Feed. These fees include the following, each of which are described in detail below: (i) Distributor Fees;<sup>19</sup> (ii) Usage Fees for both Professional and Non-Professional Users;<sup>20</sup> (iii) Enterprise Fees;<sup>21</sup> and (iv) a Data Consolidation Fee. The amount of each fee may differ depending on whether they use the BATS One Feed data for internal or external distribution. Vendors that distribute the BATS One Feed data both internally and externally will be subject to the higher of the two Distributor Fees.

*Internal Distributor Fees.* As proposed, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of \$10,000 per month. The Exchange also proposes that

<sup>18</sup> See BATS One Approval Order, *supra* note 13. The Exchange notes that a vendor can obtain the underlying depth-of-book feeds as well as EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale on the same latency basis as the Exchange would receive the underlying depth-of-book feeds necessary to create the BATS One Feed, including the BATS One Summary Feed. *Id.*

<sup>19</sup> The Exchange notes that Distributor Fees as well as the distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. See Nasdaq Rule 7019(b); see also Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR-PHLX-2010-120); Securities Exchange Act Release Nos. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR-NASDAQ-2010-110); 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR-NASDAQ-2008-102); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR-BX-2010-081).

<sup>20</sup> The Exchange notes that User fees as well as the distinctions based on professional and non-professional users have been previously filed with or approved by the Commission by Nasdaq and the New York Stock Exchange, Inc. (“NYSE”). See Securities Exchange Act Release Nos. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR-NASDAQ-2008-102).

<sup>21</sup> The Exchange notes that Enterprise fees have been previously filed with or approved by the Commission by Nasdaq, NYSE and the CTA/CQ Plans. See Nasdaq Rule 7047, Securities Exchange Act Release Nos. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR-NASDAQ-20140011); 70211 (August 15, 2013), 78 FR 51781 (August 21, 2013) (SR-NYSE-2013-58); 70010 (July 19, 2013) (File No. SR-CTA/CQ-2013-04).

each Internal Distributor shall pay a fee of \$15,000 per month where they elect to receive the BATS One Premium Feed. The Exchange does not propose to charge any User fees for the BATS One Feed where the data is received and subsequently internally distributed to Professional or Non-Professional Users.

*External Distributor Fees.* The Exchange proposes to charge those firms that distribute the BATS One Feed externally a fee of \$5,000 per month for the BATS One Summary Feed. As proposed, each External Distributor shall pay a fee of \$12,500 per month where they elect to receive the BATS One Premium Feed.

The BATS One Feed is comprised of data included in EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.<sup>22</sup> Currently, an External Distributor could create a competing product to the BATS One Premium Feed<sup>23</sup> by purchasing the [sic] each of these depth of book products from the individual BATS Exchanges and then performing its own aggregation and consolidation functions. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is \$12,500 per month,<sup>24</sup> equal to the \$12,500 per month External Distributor Fee proposed for the BATS One Premium Feed. An External Distributor that seeks to create a competing product to the BATS One Summary Feed could instead subscribe to the following data feeds: EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale,<sup>25</sup> and then perform their own aggregation and consolidation function. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is \$5,000 per month,<sup>26</sup> equal to the \$5,000 per month External Distributor Fee proposed for the BATS

<sup>22</sup> See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

<sup>23</sup> Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to separately purchase the top and last sale feeds from each of the BATS Exchanges.

<sup>24</sup> The monthly External Distributor fee is \$2,500 per month for EDGX Depth, \$2,500 per month for EDGA Depth, \$2,500 for BYX Depth, and \$5,000 for BZX Depth.

<sup>25</sup> See *supra* note 5. See also BATS Rule 11.22(d) and (g).

<sup>26</sup> The monthly External Distributor fee is \$1,250 per month for EDGX Top and EDGX Last Sale, free for EDGA Top and EDGA Last Sale (as proposed herein), \$1,250 for BYX Top and BYX Last Sale, and \$2,500 for BZX Top and BZX Last Sale. See SR-EDGX-2015-09 and SR-BYX-2015-09. See also the BZX Fee Schedule available at [http://www.batstrading.com/support/fee\\_schedule/bzx/](http://www.batstrading.com/support/fee_schedule/bzx/).

One Summary Feed. To ensure that vendors could compete with the Exchange by creating the same product as the BATS One Feed and selling it to their clients, the Exchange proposes to charge External Distributors an External Distributor fee that equals the combined External Distributor fees for each of the individual feeds listed above.

The Exchange also proposes to establish a New External Distributor Credit under which new External Distributors of the BATS One Summary Feed will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the BATS One Feed.<sup>27</sup> The New External Distributor Fee Credit will not be available to External Distributors of the BATS One Premium Feed. The Exchange does not believe the New External Distributor Credit would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

#### User Fees

In addition to Internal and External Distributor Fees, the Exchange proposes to charge those who receive the BATS One Feed from External Distributors different fees for both their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of \$10.00 per User for receipt of the BATS One Summary Feed or \$15.00 per User who elects to also receive the BATS One Premium Feed. Non-Professional Users will be assessed a monthly fee of \$0.25 per user for the BATS One Summary Feed or \$0.50 per user where they elects to receive the BATS One Premium Feed.

External Distributors must count every Professional User and Non-Professional User to which they provide BATS One Feed data. Thus, the

<sup>27</sup> The Exchange notes that just as a third party vendor could choose to offer special pricing in order to incentivize data recipients to perform necessary development and other work in order to receive and distribute a new data product, the Exchange has proposed pricing to incentivize data recipients to take and distribute the BATS One Feed.

Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data.<sup>28</sup> Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with an External Distributor's distribution of the BATS One Feed, the Distributor should count as one User each unique User that the Distributor has entitled to have access to the BATS One Feed. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.

- The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to the BATS One Feed, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to the BATS One Feed (e.g., a single User has multiple passwords and user identifications), the External Distributor should report all of those methods as an individual User.

- External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.

- If an External Distributor entitles one or more individuals to use the same device, the External Distributor should include only the individuals, and not the device, in the count.

Each External Distributor will receive a credit against its monthly Distributor Fee for the BATS One Feed equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for the BATS One Feed. For example, an External Distributor will be subject to a \$12,500 monthly Distributor Fee where they elect to receive the BATS One Premium Feed. If that External Distributor reports User quantities totaling \$12,500 or more of monthly usage of the BATS One Premium Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling \$11,500 of monthly

<sup>28</sup> Requiring that every person or device to which they provide the data is counted by the Distributor receiving the BATS One Feed is similar to the NYSE Unit-of-Count Policy. The only difference is that the NYSE Unit-of-Count Policy requires the counting of users receiving a market data product through both internal and external distribution. Because the Exchange proposes to charge Usage Fees solely to recipient firms who's Users receive data from an external distributor and not through internal distribution, it only requires the counting of Users by Distributors that disseminate the BATS One Feed externally.

usage, it will pay a net of \$1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above. In every case the Exchange will receive at least \$12,500 in connection with the distribution of the BATS One Feed (through a combination of the External Distribution Fee and per User Fees).

*Enterprise Fee.* The Exchange also proposes to establish a \$50,000 per month Enterprise Fee that will permit a recipient firm who receives the BATS Summary Feed portion of the BATS One Feed from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users and \$100,000 per month for recipient firms who elect to receive the BATS One Premium Feed. For example, if a recipient firm had 15,000 Professional Users who each receive the BATS One Summary Feed portion of the BATS One Feed at \$10.00 per month, then that recipient firm will pay \$150,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of \$50,000 for an unlimited number of Professional and Non-Professional Users for the BATS Summary Feed portion of the BATS One Feed. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls display of the BATS One Feed if it wishes such User to be covered by an Enterprise Fee rather than by per-User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users. The Enterprise Fee would be in addition to the applicable Distributor Fee.

#### Data Consolidation Fee

The Exchange also proposes to charge External Distributors of the BATS One Feed a separate Data Consolidation Fee, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. As stated above, the Exchange creates the BATS One Feed from data derived from the EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.<sup>29</sup> The Exchange notes that an External Distributor could create a competing product to the BATS One

Feed based on these individual data feeds, or, alternatively, the applicable Top and Last Sale products offered by the Exchanges, and could charge its clients a fee that it believes reflects the value of the aggregation and consolidation function. The Exchanges [sic] believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. For these reasons, the Exchange believes that vendors could readily offer a product similar to the BATS One Feed on a competitive basis at a similar cost.

The Exchange does not propose to charge Internal Distributors the separate Data Consolidation Fee as the proposed Internal Distributor Fees are greater than the cost of subscribing to each of the underlying individual feed. As discussed above, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of \$10,000 per month, as compared to \$5,000, which is the total of the underlying feeds.<sup>30</sup> Each Internal Distributor shall pay a fee of \$15,000 per month where they elect to receive the BATS One Premium Feed, as compared to \$12,500, which is the total cost of the underlying depth feeds.<sup>31</sup> The increased cost of the BATS One Feed is designed to include the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. Therefore, the Exchange does not propose to charge Internal Distributors a separate Data Consolidation Fee.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>32</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>33</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the proposed fees are competitive with those charged by other

venues and, therefore, reasonable and equitably allocated to Members.

#### Technical, Non-Substantive Changes

The Exchange believes that the non-substantive changes to its fee schedule are reasonable because they are designed to align with a previous name change within Rule 13.8 and the naming convention of the Exchange's other market data products: EDGA Depth, the EDGA Top, and EDGA Last Sale. The Exchange notes that none of the proposed non-substantive changes are designed to amend any fee, nor alter the manner in which it assesses fees. These non-substantive, technical changes to the fee schedule are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

#### Definitions Applicable to Market Data Fees

The Exchange believes that the proposed definitions are reasonable because they are designed to provide greater transparency to Members with regard to how the Exchange assesses fees for market data. The Exchange notes that none of the proposed definitions are designed to amend any fee, nor alter the manner in which it assesses fees. The Exchange believes that Members would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would assess fees. These definitions are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Lastly, the proposed definitions are based on existing rules of the Nasdaq Stock Market LLC ("Nasdaq").<sup>34</sup>

#### EDGA Top and EDGA Last Sale

The Exchange believes that its proposed fees for EDGA Last Sale and EDGA Top are consistent with Section

<sup>29</sup> See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22(a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

<sup>30</sup> See *supra* note 26.

<sup>31</sup> See *supra* note 24.

<sup>32</sup> 15 U.S.C. 78f.

<sup>33</sup> 15 U.S.C. 78f(b)(4).

<sup>34</sup> The proposed definition of "Distributor" is similar to Nasdaq Rule 7047(d)(1). The proposed definition of "Internal Distributor" is similar to Nasdaq Rule 7047(d)(1)(A). The proposed definition of "External Distributor" is similar to Nasdaq Rule 7047(d)(1)(B). The proposed definition of "Professional User" is similar to Nasdaq Rule 7047(d)(3)(A). The proposed definition of "Non-Professional User" is similar to Nasdaq Rule 7047(d)(3)(B).

6(b)(4) of the Act<sup>35</sup> because they provide for an equitable allocation of reasonable dues, fees, and other charges among its members and other recipients of Exchange data. The Exchange is making EDGA Last Sale and EDGA Top available on a voluntary basis and that use of EDGA Last Sale and Top are entirely optional. At this time, the Exchange does not intend to charge fees associated with the receipt of EDGA Last Sale or EDGA Top. The Exchange believes that the proposed pricing model is simple and easy for data recipients to comply with, and thus, will result in a minimal additional administrative burden for data recipients with respect to EDGA Last Sale and EDGA Top. The Exchange will file a proposed rule change with the Commission should it determine to implement fees for the use of EDGA Last Sale and EDGA Top. Lastly, the Exchange also believes that the proposed amendments to its fee schedule are reasonable and non-discriminatory because it [sic] will apply uniformly to all Members.

#### BATS One Feed

The Exchange also believes that the proposed fees for the BATS One Feed are consistent with Section 6(b) of the Act,<sup>36</sup> in general, and Section 6(b)(4) of the Act,<sup>37</sup> in particular, in that it [sic] they provide for an equitable allocation of reasonable fees among Users and recipients of the data and are not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act<sup>38</sup> in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,<sup>39</sup> which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to

offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fee structure on an equivalent basis. The BATS One Feed would be distributed and purchased on a voluntary basis, in that neither the BATS Exchanges nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. In addition, any customer that wishes to purchase one or more of the individual data feeds offered by the BATS Exchanges would be able to do so.

The Exchange has taken into consideration its affiliated relationship with EDGX, BYX, and BZX in its design of the BATS One Feed to assure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the BATS One Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the BATS One Feed. Any entity that receives, or elects to receive, the individual data feeds would be able to, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients with no greater cost than the Exchange.<sup>40</sup>

In addition, vendors and subscribers that do not wish to purchase the BATS One Feed may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the BATS One Feed. To enable such competition, the Exchange is offering the BATS One Feed on terms that a

subscriber of those underlying feeds could offer a competing product if it so chooses.

The Exchange notes that the use of the BATS One Feed is entirely optional. Firms have a wide variety of alternative market data products from which to choose, including the Exchanges' own underlying data products, the Nasdaq and the NYSE proprietary data products described in this filing,<sup>41</sup> and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to the BATS One Feed further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute the BATS One Feed, prospective Users likely would not subscribe to, or would cease subscribing to, the BATS One Feed. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the BATS One Feed into the vendor's own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective Users would avail themselves of that lower cost and elect not to take the BATS One Feed.

The Exchange notes that the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.<sup>42</sup>

<sup>41</sup> See *infra* note 55.

<sup>42</sup> The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to

<sup>35</sup> 15 U.S.C. 78f(b)(4).

<sup>36</sup> 15 U.S.C. 78f.

<sup>37</sup> 15 U.S.C. 78f(b)(4).

<sup>38</sup> 15 U.S.C. 78k-1.

<sup>39</sup> See 17 CFR 242.603.

<sup>40</sup> See BATS One Approval Order, *supra* note 13. The Exchange notes that a vendor can obtain the underlying depth-of-book feeds as well as EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale on the same latency basis as the Exchange would receive the underlying depth-of-book feeds necessary to create the BATS One Feed, including the BATS One Summary Feed. *Id.*



For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

*User Fees.* The Exchange believes that implementing the Professional and Non-Professional User fees for the BATS One Feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for the BATS One Feed is reasonable because it provides an additional method for retail investors to access the BATS One Feed data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.<sup>43</sup> Offering the BATS One Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

In addition, the proposed fees are reasonable when compared to fees for comparable products offered by the NYSE, Nasdaq, and under the CTA and CQ Plans. Specifically, Nasdaq offers Nasdaq Basic, which includes best bid and offer and last sale data for Nasdaq and the FINRA/Nasdaq TRF, for a

further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

<sup>43</sup> See, e.g., Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983) (establishing nonprofessional fees for CTA data); Nasdaq Rules 7023(b), 7047.

monthly fee of \$26 per professional subscriber and \$1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of \$350,000 per month for internal distribution to an unlimited number of professional users or \$365,000 per month for external distribution for up to 16,000 professional users, plus \$2 for each additional professional user over 16,000.<sup>44</sup> The NYSE offers BQT, which provides BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT. To obtain BQT, subscribers must purchase the [sic] each underlying data feed for a monthly fee of \$18 per professional subscriber and \$1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of \$365,000 per month for an unlimited number of professional users. The NYSE does not offer an enterprise license for non-professional users. The Exchange's proposed per-User Fees are lower than the NYSE's and Nasdaq's fees. In addition, the Exchange is proposing Professional and Non-Professional User fees and Enterprise Fees that are less than the fees currently charged by the CTA and CQ Plans. Under the CTA and CQ Plans, Tape A consolidated last sale and bid-ask data are offered together for a monthly fee of \$20-\$50 per device, depending on the number of professional subscribers, and \$1.00 per non-professional subscriber, depending on the number of non-professional subscribers.<sup>45</sup> A monthly enterprise fee of \$686,400 is available under which a U.S. registered broker-dealer may distribute data to an unlimited number of its own employees and its non-professional subscriber brokerage account customers. Finally, in contrast to Nasdaq UTP and the CTA and CQ Plans, the Exchange also will permit enterprise distribution by a non-broker-dealer.

*Enterprise Fee.* The proposed Enterprise Fee for the BATS One Feed is reasonable as the fee proposed is less than the enterprise fees currently charged for underlying data feeds for NYSE BQT, Nasdaq Basic, and consolidated data distributed under the Nasdaq UTP and the CTA and CQ Plans. In addition, the Enterprise Fee could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of the BATS One Feed, then it may continue

<sup>44</sup> See Nasdaq Rule 7047.

<sup>45</sup> See CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at <https://cta.nyxdata.com/CTA>.

using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the BATS One Feed, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of users.

*Distributor Fee.* The Exchange believes that the proposed Distributor Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution.<sup>46</sup> The Exchange believes that the Distributor Fees for the BATS One Feed are reasonable and fair in light of alternatives offered by other market centers. First, although the Internal Distributor fee is higher than those of competitor products, there are no User fees assessed for Users that receive the BATS One Feed data through an Internal Distributor, which results in a net cost that is lower than competitor products for many data recipients and will be easier to administer.

The proposed Distributor Fees for the BATS One Feed are also designed to ensure that vendors could compete with the Exchange by creating a similar product as the BATS One Feed. The Exchange believes that the proposed Distributor Fees are equitable and

<sup>46</sup> The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. See Nasdaq Rule 019(b); see also Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR-PHLX-2010-120); Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR-NASDAQ-2010-110); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR-BX-2010-081).

reasonable as it [sic] equals the combined fee of subscribing to each individual data feed of the BATS Exchanges, which have been previously published by the Commission.<sup>47</sup> Currently, an External Distributor that seeks to create a competing product to the BATS One Premium Feed<sup>48</sup> would need to purchase each of the depth of book products from the individual BATS Exchanges and then perform its own aggregation and consolidation functions.<sup>49</sup> The combined external distributor fees for these individual depth of book feeds of the BATS Exchanges is \$12,500 per month,<sup>50</sup> equal to the \$12,500 per month External Distributor Fee proposed for the BATS One Premium Feed. An External Distributor that seeks to create a competing product to the BATS One Summary Feed could alternatively subscribe to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale, and then perform their own aggregation and consolidation function. The combined external distributor fees for these individual data feeds of the BATS Exchanges is \$5,000 per month,<sup>51</sup> equal to the \$5,000 per month External Distributor Fee proposed for the BATS One Summary Feed. In addition, the Exchange believes it is reasonable to not charge External Distributors a Distribution Fee during their first three (3) months and does not believe this would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

<sup>47</sup> See *supra* notes 15 and 16.

<sup>48</sup> Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to separately purchase the top and last sale feeds from each of the BATS Exchanges.

<sup>49</sup> As discussed, the Exchange proposes to charge External Distributors a separate Data Consolidation Fee to reflect the value of the consolidation function performed by the Exchange.

<sup>50</sup> See *supra* note 24.

<sup>51</sup> See *supra* note 26.

#### Data Consolidation Fee

The Exchange believes that the proposed \$1,000 per month Data Consolidation Fee charged to External Distributors who receive the BATS One Feed is reasonable because it represents the value of the data aggregation and consolidation function that the Exchange performs. The Exchange also notes that its proposed \$1,000 per month Data Consolidation Fee is identical to an access fee charged by the NYSE for BQT, which is also designed to represent the value of the data aggregation function provided by the NYSE in constructing its BQT feed.<sup>52</sup>

The Exchange further believes the proposed Data Consolidation Fee is not designed to permit unfair discrimination because all External Distributor who subscribe to the BATS One Feed will be charged the same fee. The Exchange believes it is reasonable and not unfairly discriminatory to not charge Internal Distributor a separate Data Consolidation Fee as the proposed Internal Distributor Fees are greater than the cost of subscribing to each of the underlying individual feed. As discussed above, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of \$10,000 per month as compared to \$5,000, which is the total of the underlying feeds.<sup>53</sup> Each Internal Distributor shall pay a fee of \$15,000 per month where they elect to receive the BATS One Premium Feed as compared to \$12,500, which is the total cost of the underlying depth feeds.<sup>54</sup> The increased cost of the BATS One Feed is designed to include the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee is reasonable would not permit unfair discrimination.

In addition, a vendor could create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with the BATS One Feed pricing. The Exchanges believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor

<sup>52</sup> See Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

<sup>53</sup> See *supra* note 26.

<sup>54</sup> See *supra* note 24.

already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. Therefore, the Exchange believes the proposed pricing would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with BATS One Feed pricing as discussed further below.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

#### Technical, Non-Substantive Changes

The proposed name changes to EdgeBook and Depth and EdgeBook Attributed will not result in any burden on competition. The proposed amendments are not designed to address and competitive issues, but rather provide consistency amongst the naming conventions used for the Exchange market data products, resulting in additional clarity and transparency to Members, Users, and the investing public regarding the Exchange's market data products. The Exchange notes that none of the proposed non-substantive changes are designed to amend any fee, nor alter the manner in which it assesses fees. These non-substantive, technical changes to the fee schedule are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion.

#### Definitions Applicable to Market Data Fees

The proposed definitions applicable to market data fees will not result in any burden on competition. The proposed definitions are not designed to amend any fee, nor alter the manner in which it assesses fees. The Exchange believes that Members would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would assess fees for market data. These definitions are intended to make the Fee Schedule clearer and less confusing for investors and are not designed to have a competitive impact.

#### EDGA Top and EDGA Last Sale

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance

of the purposes of the Act, as amended. The Exchange's ability to price EDGA Last Sale and EDGA Top are constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, EDGA Last Sale and EDGA Top compete with a number of alternative products. For instance, EDGA Last Sale and EDGA Top do not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks ("ECN") that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to EDGA last sale prices and top-of-book quotations though integrated with the prices of other markets on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered

all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to EDGA Last Sale and EDGA Top, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

#### BATS One Feed

The BATS One Feed will enhance competition because it not only provides content that is competitive with the similar products offered by other exchanges, but will provide pricing that is competitive as well. The BATS One Feed provides investors with an alternative option for receiving market data and competes directly with similar market data products currently offered by the NYSE and Nasdaq.<sup>55</sup> As previously stated, the fees for the BATS One Feed are significantly lower than alternative exchange products. The BATS One Feed is less expensive per professional user and more than 85% less expensive for an enterprise license for professional users (50% less for non-professional users) when compared to a similar competitor exchange product, offering firms a lower cost alternative for similar content.

Although the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data

elements would be taken to create the BATS One Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed BATS One Feed. Any entity that receives, or elects to received, the underlying data feeds would be able to, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients and at a similar cost.<sup>56</sup>

The proposed pricing the Exchange would charge clients for the BATS One Feed compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The pricing the Exchange would charge for the BATS One Feed would not be lower than the cost to a vendor of receiving the underlying data feeds. The pricing the Exchange would charge clients for the BATS One Feed compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The Distributor Fees that the Exchange intends to propose for the BATS One Feed would not be less than the combined fee of subscribing to each individual data feed.<sup>57</sup> In addition, the Exchange believes that not charging External Distributors a Distribution Fee during their first three (3) months would not impede a vendor from creating a competing product. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor

<sup>55</sup> See Nasdaq Basic, <http://www.nasdaqtrader.com/Trader.aspx?id=NASDAQbasic> (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility ("TRF")); Nasdaq NLS Plus, <http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus> (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR-NYSE-2014-40) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No.1, To Establish the NYSE Best Quote & Trades ("BQT") Data Feed); <http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades> (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

<sup>56</sup> See BATS One Approval Order, *supra* note 13.

<sup>57</sup> The combined external distribution fee for the individual depth of book data feeds of the BATS Exchanges is \$12,500.00 per month. The monthly External Distributor fee is \$2,500 per month for the EDGX Depth, \$2,500 per month for the EDGA Depth, \$2,500 for BYX Depth, and \$5,000 for BZX Depth. The combined external distribution fee for the individual top and last sale data feed of the BATS Exchanges is \$5,000.00 per month. The monthly External Distributor fee is \$1,250 per month for EDGX Top and EDGX Last Sale, free for EDGA Top and EDGA Last Sale, \$1,250 for BYX Top and BYX Last Sale, and \$2,500 for BZX Top and BZX Last Sale. See SR-EDGX-2015-09 and SR-BYX-2015-09. See also the BZX Fee Schedule available at [http://www.batstrading.com/support/fee\\_schedule/bzx/](http://www.batstrading.com/support/fee_schedule/bzx/).

Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period and offer a competing product on a similar basis as the Exchange.

The Exchange further believes that its proposed monthly Data Consolidation Fee would be pro-competitive because it is identical to a similar fee charged by the NYSE for its BQT feed and a vendor could create a competing product, perform a similar aggregating and consolidating function, and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product. The Exchanges believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. For these reasons, the Exchange believes the proposed pricing, including the New External Distributor Fee Credit, would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with BATS One Feed pricing.

Finally, the Exchange notes that there is already actual competition for products similar to the BATS One Feed. The NYSE offers BQT which provides BBO and last sale information for the NYSE, NYSE Arca Equities, Inc. and NYSE MKT LLC.<sup>58</sup> Nasdaq already offers Nasdaq Basic, a filed market data product, and through its affiliate, offers NLS Plus which provides a unified view of last sale information similar to the BATS One Feed.<sup>59</sup> The existence of these competing data products demonstrates that there is ample, existing competition for products such as the BATS One Feed and the fees associated by such products is constrained by competition.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to

establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to the BATS One Feed, including the existing underlying feeds, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>60</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>61</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGA-2015-09 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-EDGA-2015-09. 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 EDGA. 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-EDGA-2015-09 and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>62</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2015-03654 Filed 2-23-15; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-74290; File No. SR-NYSEArca-2015-05]**

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of WisdomTree Put Write Strategy Fund Under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3)**

February 18, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the

<sup>58</sup> See *supra* note 55.

<sup>59</sup> *Id.*

<sup>60</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>61</sup> 17 CFR 240.19b-4(f)(2).

<sup>62</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 3, 2015, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of the following fund of the WisdomTree Trust under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) (“Investment Company Units”): The WisdomTree Put Write Strategy Fund. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the WisdomTree Put Write Strategy Fund (“Fund”) under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units on the Exchange.<sup>4</sup> The Fund will be an index-

based exchange traded fund (“ETF”). The Shares will be offered by the WisdomTree Trust (“Trust”), which was established as a Delaware statutory trust on December 15, 2005. The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N-1A (“Registration Statement”) with the Commission on behalf of the Fund.<sup>5</sup>

WisdomTree Asset Management, Inc. (“WisdomTree Asset Management”) will be the investment adviser (“Adviser”) to the Fund.<sup>6</sup> Mellon Capital Management will serve as sub-adviser for the Fund (“Sub-Adviser”).<sup>7</sup> State Street Bank and Trust Company will be the administrator, custodian and transfer agent for the Trust. Foreside Fund Services, LLC will serve as the distributor for the Fund (“Distributor”).<sup>8</sup>

#### Description of the Shares and the Fund

As discussed in more detail below, the Fund’s investment objective is to seek investment results that, before fees and expenses, closely correspond to the price and yield performance of the CBOE S&P 500 Put Write Index (“Index”). The Index was developed and is maintained by the Chicago Board Options Exchange, Inc. (“CBOE” or the “Index Provider”). None of the Trust, the Adviser, the Sub-Adviser, State Street Bank and Trust Company, or the Distributor is affiliated with the Index Provider.

Commentary .01(b)(1) to Rule 5.2(j)(3) provides that, if the applicable index is maintained by a fund advisor or a broker-dealer, such fund advisor or broker-dealer shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who

company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities).

<sup>5</sup> See Post-Effective Amendment No. 381 to Registration Statement on Form N-1A for the Trust, dated December 15, 2014 (File Nos. 333-132380 and 811-21864). The descriptions of the Fund and the Shares contained herein are based on information in the Registration Statement.

<sup>6</sup> WisdomTree Investments, Inc. (“WisdomTree Investments”) is the parent company of WisdomTree Asset Management.

<sup>7</sup> The Sub-Adviser is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings. The Adviser has ongoing oversight responsibility.

<sup>8</sup> The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). See Investment Company Act Release No. 28171 (October 27, 2008) (File No. 812-13458) (“Exemptive Order”). Investments made by the Fund will comply with the conditions in the Exemptive Order.

is not a broker-dealer or fund advisor.<sup>9</sup> The Index Provider is not registered as an investment adviser or broker-dealer and is not affiliated with any broker-dealers. The Adviser is not registered as, or affiliated with, any broker-dealer.<sup>10</sup> The Sub-Adviser is affiliated with multiple broker-dealers and has implemented a “fire wall” with respect to such broker-dealers and their personnel regarding access to information concerning the composition and/or changes to the Index.<sup>11</sup> In addition, Sub-Adviser personnel who make decisions regarding the Fund’s portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund’s portfolio.

In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-

<sup>9</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and Sub-adviser 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.

<sup>10</sup> The Adviser and the Index Provider have represented that a fire wall exists around the respective personnel who have access to information concerning changes and adjustments to the Index.

<sup>11</sup> The Exchange represents that the Adviser and Sub-Adviser, and their related personnel, are subject to Advisers Act Rule 204A-1. This Rule specifically requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (i) Standards of business conduct that reflect the firm’s/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A-1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer (“CCO”) or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment adviser to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. 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.

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> NYSE Arca Equities Rule 5.2(j)(3)(A) provides that an Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment

dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the “generic” listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3), applicable to the listing of Investment Company Units based upon an index of “US Component Stocks.”<sup>12</sup> Specifically, Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) sets forth the requirements to be met by components of an index or portfolio of US Component Stocks. Because, as discussed in more detail herein, the Index will consist primarily of S&P 500 Index put options (“SPX Puts”), rather than US Component Stocks, the Index does not satisfy the requirements of Commentary .01(a)(A).<sup>13</sup>

<sup>12</sup> NYSE Arca Equities Rule 5.2(j)(3) provides that the term “US Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act and an American Depositary receipt, the underlying equity securities of which is registered under Sections 12(b) or 12(g) of the Act.

<sup>13</sup> The Exchange notes that the S&P 500 Index has been previously approved by the Commission under Section 19(b)(2) of the Act in connection with the listing and trading of index options and Portfolio Depositary Receipts, as well as other securities. *See, e.g.*, Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500 Index); 31591 (December 18, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500 Index). NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(5) provides that all securities in the applicable index or portfolio shall be US Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 under Regulation NMS of the Act. Each component stock of the S&P 500 Index is a US Component Stock that is listed on a national securities exchange and is an NMS Stock. Options are excluded from the definition of NMS Stock. The Fund and the Index meet all of the requirements of the listing standards for Investment Company Units in Rule 5.2(j)(3) and the requirements of Commentary .01, except the requirements in Commentary .01(a)(A)(1)–(5), as the Index consists of options on US Component Stocks. The S&P 500 Index consists of US Component Stocks and satisfies the requirements of Commentary .01(a)(A)(1)–(5).

#### WisdomTree Put Write Strategy Fund Index Methodology

The Fund’s investment objective is to seek investment results that, before fees and expenses, closely correspond to the price and yield performance of the Index. The Index tracks the value of a passive investment strategy, which consists of overlaying “SPX Puts” over a money market account, invested in one and three-month Treasury bills (“PUT Strategy”).<sup>14</sup> The SPX Puts are struck at-the-money and are sold on a monthly basis, usually the third Friday of the month (*i.e.*, the “Roll Date”), which matches the expiration date of the SPX Puts.<sup>15</sup> All SPX Puts are standardized options traded on the Chicago Board Options Exchange.

At each Roll Date, any settlement loss from the expiring SPX Puts is financed by the Treasury bill account and a new batch of at-the-money SPX Puts is sold. The revenue from their sale is added to the Treasury bill account. In March quarterly cycle months, the three-month Treasury bills are deemed to mature, and so the total cash available is reinvested at the three-month Treasury bill rate. In other months, the revenue from the sale of SPX Puts is invested separately at the one-month Treasury bill rate.

The number of SPX Puts sold is chosen to ensure “Full Collateralization”.<sup>16</sup> The strike price of the new SPX Puts that are sold is the strike price of listed SPX Puts that is closest to but not greater than the last value of the S&P 500 Index reported before 11:00 a.m. Eastern time (“ET”). For example, if the last S&P 500 Index value reported before 11:00 a.m. ET is 1233.10 and the closest listed SPX Put

<sup>14</sup> The put-write strategy of selling cash-secured SPX Puts has the potential to appeal to investors who wish to add income and attempt to boost risk-adjusted returns, in return for risking under-performance during bull markets. An investor who engages in a cash-secured (*i.e.*, collateralized) put sales strategy sells (or “writes”) a put option contract and at the same time deposits the full cash amount necessary for a possible purchase of underlying shares in the investor’s brokerage account. Additional information on the methodology used to calculate the Index can be found at: <http://www.cboe.com/micro/put/PutWriteMethodology.pdf>.

<sup>15</sup> The base date for the Index is June 1, 1988 (“Base Date”), when the value of the Index was 100. The daily historical value for the Index recently was extended back to June 30, 1986, on which date the Index value was 89.91. Daily historical value of the Index is available at [www.cboe.com/PUT](http://www.cboe.com/PUT) and from Bloomberg and other price quote vendors.

<sup>16</sup> Full Collateralization means that at the expiration of the SPX Puts, the total value of the Treasury bill investments must be equal to the maximum possible loss from final settlement of the SPX Puts or the product of the number of SPX Puts sold and the at-the-money strike price.

strike price below 1233.10 is 1230 then 1230 strike SPX Puts are sold.

The SPX Puts are deemed to be sold at a price equal to the volume-weighted average price (“VWAP”) of SPX Puts with that strike price during the half-hour period beginning at 11:30 a.m. ET.<sup>17</sup> If no transactions occur at the new SPX Put strike price between 11:30 a.m. and 12:00 p.m. ET, then the new SPX Puts will be deemed sold at the last bid price reported before 12:00 p.m. ET.

At expiration, the SPX Puts are settled against a Special Opening Quotation (“SOQ”) of the S&P 500 Index. The SOQ is a special calculation of the S&P 500 Index that is compiled from the opening prices of component stocks underlying the S&P 500 Index. The SOQ calculation is performed when all 500 stocks underlying the S&P 500 Index have opened for trading, and is usually determined before 11:00 a.m. ET.<sup>18</sup> The final settlement price of the expiring SPX Puts is equal to the difference between their strike price and the SOQ, not to exceed zero.

The CBOE calculates the Index value in real-time every fifteen seconds during each trading day excluding roll days. On any given date, the Index represents the mark-to-market value of the base date \$100 invested in the Put Strategy.

#### Fund’s Investment Methodology

Under normal circumstances,<sup>19</sup> the Fund will invest not less than 80% of

<sup>17</sup> The CBOE calculates the VWAP in a two-step process: First, the Fund will exclude trades in the new call option between 11:30 a.m. and 1:30 p.m. ET that are identified as having been executed as part of a “spread”, and then the Fund will calculate the weighted average of all remaining transaction prices of the new call option between 11:30 a.m. and 1:30 p.m. ET, with weights equal to the fraction of total non-spread volume transacted at each price during this period. The source of the transaction prices used in the calculation of the VWAP will be the CBOE’s Market Data Retrieval (“MDR”) System. Time and sales information from CBOE’s MDR System is disseminated through the Options Price Reporting Authority and is publicly available through price quote vendors.

<sup>18</sup> If the third Friday of the month is an exchange holiday, the SPX Puts are settled against the SOQ on the previous business day and the new SPX Puts are selected on that day as well.

<sup>19</sup> The terms “under normal circumstances” and “normal market conditions” include, but are not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In response to adverse market, economic, political, or other conditions the Fund reserves the right to invest in U.S. government securities, other “money market instruments” (as defined below), and cash, without limitation, as determined by the Adviser or Sub-Adviser. In the event the Fund engages in these temporary defensive strategies that are inconsistent with its investment strategies, the Fund’s ability to achieve its investment objectives may be limited.

its assets in SPX Puts and short-term U.S. Treasury securities.<sup>20</sup> The Fund's investment strategy will be designed to sell a sequence of one-month, at-the-money, SPX Puts and invest cash at one and three-month Treasury bill rates. The number of SPX Puts sold will vary from month to month, but will be limited to permit the amount held in the Fund's investment in Treasury bills to finance the maximum possible loss from final settlement of the SPX Puts.<sup>21</sup>

The SPX Puts will be struck at-the-money and will be sold on a monthly basis on the Roll Date, (*i.e.*, the same Roll Date at [sic] that used by the Index), which matches the expiration date of the SPX Put options. At each Roll Date, any settlement loss from the expiring SPX Puts will be financed by the Fund's Treasury bill investments and a new batch of at-the-money SPX Puts will be sold. The revenue from their sale will be added to the Treasury bill account. In March quarterly cycle months, the three-month Treasury bills will be deemed to mature, and so the total cash available will be reinvested at the three-month Treasury bill rate. In other months, the revenue from the sale of puts will be invested separately at the one-month Treasury bill rate.

The strike price of the new SPX Puts that are sold will be the strike price of listed SPX Puts that is closest to but not greater than the last value of the S&P 500 Index reported before 11:00 a.m. ET. For example, if the last S&P 500 Index value reported before 11:00 a.m. ET is 1233.10 and the closest listed SPX Put strike price below 1233.10 is 1230 then 1230 strike SPX Puts will be sold.

The SPX Puts will be deemed to be sold at a price equal to the VWAP of SPX Puts with that strike during the half-hour period beginning at 11:30 a.m. ET.<sup>22</sup> If no transactions occur at the new put strike price between 11:30 a.m. and 12:00 p.m. ET, then the new put options will be deemed sold at the last bid price reported before 12:00 p.m. ET.

At expiration, the SPX Puts will be settled against a SOQ of the S&P 500 Index. The Fund will calculate the SOQ in the same manner as is used by CBOE to determine the Index value.

<sup>20</sup> The Treasury securities in which the Fund may invest will include variable rate Treasury securities, whose rates are adjusted daily (or at such other interval as may later be determined by the Department of the Treasury) to correspond with the rate paid on one-month or three-month month [sic] Treasury securities, as applicable.

<sup>21</sup> The number of SPX Puts sold will be chosen to ensure Full Collateralization, *see* note 16, *supra*.

<sup>22</sup> The Fund will calculate the VWAP in the same manner as is used by CBOE to calculate the VWAP to determine the Index value. *See* note 17, *supra*.

### Secondary Investment Strategies

The Fund may invest its remaining assets in short-term, high quality securities issued or guaranteed by the U.S. government (in addition to U.S. Treasury securities) and non-U.S. governments, and each of their agencies and instrumentalities; U.S. government sponsored enterprises; repurchase agreements backed by U.S. government and non-U.S. government securities; money market mutual funds; and deposit and other obligations of U.S. and non-U.S. banks and financial institutions ("money market instruments")<sup>23</sup> and derivative instruments or other investments, as described below. The Fund may invest up to 20% of its net assets (in the aggregate) in one or more of the following investments not included in the Index, but which the Adviser or Sub-Adviser believes will help the Fund to track the Index. For example, there may be instances in which the Adviser or Sub-Adviser may choose to purchase or sell financial instruments not in the Index which the Adviser or Sub-Adviser believes are appropriate to substitute for one or more Index components in seeking to replicate, before fees and expenses, the performance of the Index. To effect this investment strategy, the Fund may invest in S&P 500 ETF put options,<sup>24</sup> total return swaps on the Index,<sup>25</sup> S&P 500 Index futures

<sup>23</sup> All money market instruments acquired by the Fund will be rated investment grade, except that a Fund may invest in unrated money market instruments that are deemed by the Adviser or Sub-Adviser to be of comparable quality to money market securities rated investment grade. The term "investment grade," for purposes of money market instruments only, is intended to mean securities rated A1 or A2 by one or more nationally recognized statistical rating organizations.

<sup>24</sup> An index option gives its holder the right, but not the obligation, to buy or sell a basket of stocks, at an agreed upon price at or before a certain date. An ETF option gives its holder the right, but not the obligation, to buy or sell an exchange-traded product, such as shares in an ETF, at an agreed upon price, at or before a certain date.

<sup>25</sup> To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house. The Fund may also invest in money market instruments that may serve as collateral for the swap agreements. The Adviser or Sub-Adviser will also attempt to mitigate the Fund's respective credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of the counterparty. The Adviser or Sub-Adviser will take various steps to limit counterparty credit risk as described in the Registration Statement. The Fund will enter into over-the-counter non-centrally cleared instruments only with financial institutions that meet certain credit quality standards and monitoring policies. The Fund may also use various techniques to minimize credit risk, including early termination or reset and payment, using different counterparties, and limiting the net amount due from any individual counterparty. The Fund generally will collateralize over-the-counter non-centrally cleared

(including E-mini S&P 500 Futures), or options on S&P 500 Index futures,<sup>26</sup> whose collective performance is intended to correspond to the Index.<sup>27</sup> The Fund, may invest up to 10% of its assets in over-the-counter S&P 500 Index put options ("OTC S&P 500 Index put options"). The foregoing investments shall include buying the applicable derivative instrument or selling the applicable derivative instrument (*i.e.*, writing the applicable put option) and investing the proceeds.

The Fund may invest up to 20% of its assets in other exchange traded products ("ETPs"), such as other ETFs, as well as in non-exchange-traded registered open-end investment companies (*i.e.*, mutual funds).<sup>28</sup>

instruments with cash and/or certain securities. Such collateral will generally be held for the benefit of the counterparty in a segregated tri-party account at the custodian to protect the counterparty against non-payment by the Fund. In the event of a default by the counterparty, and the Fund is owed money in the over-the-counter non-centrally cleared instruments transaction, the Fund will seek withdrawal of the collateral from the segregated account and may incur certain costs exercising its right with respect to the collateral.

<sup>26</sup> The Fund will limit its direct investments in futures and options on futures to the extent necessary for the Adviser to claim the exclusion from regulation as a "commodity pool operator" with respect to the Fund under Rule 4.5 promulgated by the Commodity Futures Trading Commission ("CFTC"), as such rule may be amended from time to time. Under Rule 4.5 as currently in effect, the Fund would limit its trading activity in futures and options on futures (excluding activity for "bona fide hedging purposes," as defined by the CFTC) such that it will meet one of the following tests: (i) Aggregate initial margin and premiums required to establish its futures and options on futures positions will not exceed 5% of the liquidation value of the Fund's portfolio, after taking into account unrealized profits and losses on such positions; or (ii) aggregate net notional value of its futures and options on futures positions will not exceed 100% of the liquidation value of the Fund's portfolio, after taking into account unrealized profits and losses on such positions. The exchange-listed futures contracts in which the Fund may invest will be listed on exchanges in the U.S. Each of the exchange-listed futures contracts in which the Fund may invest will be listed on exchanges that are members of the Intermarket Surveillance Group ("ISG").

<sup>27</sup> For example, the Fund may invest in total return swaps that create positions equivalent to investments in SPX Puts and U.S. Treasury securities. In a total return swap the underlying asset to the swap agreement is typically an equity index, loans or bonds. The Fund's investments in total return swap agreements will be backed by investments in U.S. government securities in an amount equal to the exposure of such contracts.

<sup>28</sup> The Fund may invest in shares of both taxable and tax-exempted money market funds. When used herein, ETPs may include, without limitation, Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust-Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule

Continued

The Fund may invest in securities (other than U.S. Treasury securities, described above) that have variable or floating interest rates which are readjusted on set dates (such as the last day of the month or calendar quarter) in the case of variable rates or whenever a specified interest rate change occurs in the case of a floating rate instrument. Variable or floating interest rates generally reduce changes in the market price of securities from their original purchase price because, upon readjustment, such rates approximate market rates. Accordingly, as interest rates decrease or increase, the potential for capital appreciation or depreciation is less for variable or floating rate securities than for fixed rate obligations.

#### Investment Restrictions

The Fund may hold up to an aggregate of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser or Sub-Adviser.<sup>29</sup> The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available

8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600), and closed-end funds. The ETPs in which the Fund may invest all will be listed and traded on U.S. registered exchanges. The Fund may invest in the securities of ETPs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act or any rule, regulation or order of the Commission or interpretation thereof. The Fund will only make such investments in conformity with the requirements of Section 817 of the Internal Revenue Code of 1986. The ETPs in which the Fund may invest will primarily be index-based ETFs that hold substantially all of their assets in securities representing a specific index. The Fund will not invest in leveraged (e.g., 2X, -2X, 3X, or -3X) ETPs.

<sup>29</sup> The Fund's Sub-Adviser is responsible for complying with the Fund's restrictions on investing in illiquid assets. In doing that, the Sub-Adviser makes ongoing determinations about the liquidity of Rule 144A securities that the Fund may invest in. In reaching liquidity decisions, the Sub-Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

markets as determined in accordance with Commission staff guidance.<sup>30</sup>

The Fund will not invest in any non-U.S. equity securities. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.<sup>31</sup>

In order to reduce interest rate risk, the Fund will generally maintain a weighted average portfolio maturity of 180 days or less on average (not to exceed 18 months) and will not purchase any money market instrument with a remaining maturity of more than 397 calendar days. The "average portfolio maturity" of a Fund is the average of all current maturities of the individual securities in the Fund's portfolio. The Fund's actual portfolio duration may be longer or shorter depending on market conditions.

The Fund intends to qualify each year as a regulated investment company (a "RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended.<sup>32</sup> The Fund will invest its respective assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M. In addition to satisfying the above referenced RIC diversification requirements, no portfolio security held by the Fund (other than U.S. government securities) will represent

<sup>30</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933 (15 U.S.C. 77a)).

<sup>31</sup> The Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a fund, including a fund's use of derivatives, may give rise to leverage, causing a fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or earmark liquid assets or otherwise cover the transactions that give rise to such risk. See 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); *Dreyfus Strategic Investing*, Commission No-Action Letter (June 22, 1987); *Merrill Lynch Asset Management, L.P.*, Commission No-Action Letter (July 2, 1996).

<sup>32</sup> 26 U.S.C. 851.

more than 30% of the weight of the Fund's portfolio and the five highest weighted portfolio securities of the Fund (other than U.S. government securities) will not in the aggregate account for more than 65% of the weight of the Fund's portfolio. For these purposes, the Fund may treat repurchase agreements collateralized by U.S. government securities as U.S. government securities.<sup>33</sup>

The Fund will not concentrate 25% or more of the value of its total assets (taken at market value at the time of each investment) in any one industry, as that term is used in the 1940 Act (except that this restriction does not apply to obligations issued by the U.S. government or their respective agencies and instrumentalities or government-sponsored enterprises).<sup>34</sup>

#### Creation and Redemption of Shares

According to the Registration Statement, the Fund will issue and redeem Shares on a continuous basis at net asset value ("NAV"),<sup>35</sup> only in large blocks of Shares ("Creation Units"), in transactions with Authorized Participants. Creation Units generally will consist of 100,000 Shares, though this may change from time to time. Creation Units are not expected to consist of less than 50,000 Shares.

The consideration for purchase of a Creation Unit of the Fund generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (the "Deposit Securities") per Creation Unit and the "Cash Component" (defined below), computed as described below or (ii) the cash value of the Deposit Securities ("Deposit Cash") and the "Cash Component," computed as described below. Because non-exchange traded derivatives and certain listed derivatives are not currently eligible for in-kind transfer, they will be substituted with an amount of cash of equal value (i.e., Deposit Cash) when the Fund processes purchases of Creation Units

<sup>33</sup> The Fund may enter into repurchase agreements with counterparties that are deemed to present acceptable credit risks, and may enter into reverse repurchase agreements, which involve the sale of securities held by the Fund subject to its agreement to repurchase the securities at an agreed upon date or upon demand and at a price reflecting a market rate of interest.

<sup>34</sup> See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

<sup>35</sup> The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (NYSE), generally 4:00 p.m. ET (the "NAV Calculation Time"). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding.



in-kind. Specifically, the Fund will not accept exchange-traded or over-the-counter options, exchange traded futures (or options on futures), and total return swaps as Deposit Securities.

When accepting purchases of Creation Units for cash, the Fund may incur additional costs associated with the acquisition of Deposit Securities that would otherwise be provided by an in-kind purchase. Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component constitute the "Fund Deposit," which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The Cash Component is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable. The Cash Component serves the function of compensating for any difference between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

A portfolio composition file, to be sent via the National Securities Clearing Corporation ("NSCC"), will be made available on each business day, prior to the opening of business on the Exchange (currently 9:30 a.m. ET) containing a list of the names and the required amount of each security in the Deposit Securities to be included in the current Fund Deposit for the Fund (based on information about the Fund's portfolio at the end of the previous business day). In addition, on each business day, the estimated Cash Component, effective through and including the previous business day, will be made available through NSCC.

The Fund Deposit will be applicable for purchases of Creation Units of the Fund until such time as the next-announced Fund Deposit is made available. In addition, the composition of the Deposit Securities may change as, among other things, corporate actions and investment decisions by the Adviser are implemented for the Fund's portfolio.

All purchase orders must be placed by an "Authorized Participant." An Authorized Participant must be either a broker-dealer or other participant in the Continuous Net Settlement System ("Clearing Process") of the NSCC or a participant in The Depository Trust Company ("DTC") with access to the DTC system, and must execute an agreement with the Distributor that governs transactions in the Fund's Creation Units. In-kind portions of purchase orders will be processed

though the Clearing Process when it is available.

Shares of the Fund may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Distributor and only on a business day. The Fund, through the NSCC, will make available immediately prior to the opening of business on each business day, the list of the names and quantities of the Fund's portfolio securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day ("Fund Securities"). Redemption proceeds for a Creation Unit will be paid either in-kind or in cash or a combination thereof, as determined by the Trust. With respect to in-kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the "Cash Redemption Amount"). In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust's discretion, an Authorized Participant may receive the corresponding cash value of the securities in lieu of the in-kind securities representing one or more Fund Securities.<sup>36</sup> Because non-exchange traded derivatives and certain listed derivatives are not eligible for in-kind transfer, they will be substituted with an amount of cash of equal value when the Fund processes redemptions of Creation Units in-kind. Specifically, the Fund will transfer the corresponding cash value of exchange-traded options, exchange-traded futures, exchange-traded options on futures contracts, and total return swap agreements in lieu of in-kind securities.

The right of redemption may be suspended or the date of payment postponed: (i) For any period during which the NYSE is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the NYSE is suspended or restricted; (iii) for any period during which an emergency

<sup>36</sup> The Adviser represents that, to the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

exists as a result of which disposal of the Shares or determination of the Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as permitted by the Commission.

For an order involving a Creation Unit to be effectuated at the Fund's NAV on a particular day, it must be received by the Distributor by or before the deadline for such order ("Order Cut-Off Time"). The Order Cut-Off Time for creation and redemption orders for the Fund will be 4:00 p.m. ET. Order for creations or redemptions of Creation Units for cash generally must be submitted by 4:00 p.m. ET. A standard creation or redemption transaction fee (as applicable) will be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

According to the Registration Statement, the Fund Securities received on a redemption will generally correspond pro rata, to the extent practicable, to the securities in the Fund's portfolio. Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units.

#### Net Asset Value

According to the Registration Statement, the Fund will calculate its NAV at the close of the regular trading session of each business day (normally 4:00 p.m. ET) using the values of the Fund's portfolio securities. The Fund will calculate its NAV by: (i) Taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total amount of Shares outstanding.

In valuing its securities, the Fund will use market quotes or official closing prices if they are readily available. In cases where quotes are not readily available, the Fund may value securities based on fair values developed using methods approved by the Fund's Board of Trustees ("Board"), as discussed below. When valuing fixed income securities with remaining maturities of 60 days or less, the Fund may use the security's amortized cost, which approximates the security's market value.

According to the Adviser, fixed income securities, including without limitation, U.S. government securities and other money market instruments that are fixed income securities, will generally be valued based on the midpoint of bid-ask prices received from independent pricing services as of the announced closing time for trading in fixed-income instruments in the market in which they trade. In

determining the value of a fixed-income investment, pricing services determine valuations for normal institutional-size trading units of such securities using valuation models or matrix pricing, which incorporates yield and/or price with respect to bonds that are considered comparable in characteristics such as rating, interest rate and maturity date and quotations from securities dealers to determined current value.

Exchange traded assets (including without limitation, SPX Puts, listed futures contracts and options on futures, options on ETFs, and ETPs) will be valued at the last reported sale price or the official closing price on that exchange where the security or other instrument is primarily traded on the day that the valuation is made. Mutual funds will be valued daily at their respective NAVs. Money market funds are typically priced once each business day and their prices are available through the applicable fund's Web site or from major market vendors.

With respect to derivative instruments, if, however, neither the last sales price nor the official closing price is available, each of these derivative instruments will be valued based on the midpoint of bid-ask prices.

Non-exchange-traded derivatives, including total return swaps and OTC S&P 500 Index put options will normally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the closing of the principal markets for those assets. Prices from independent pricing services will also include prices based on valuation models or matrix pricing to determine current value. Prices obtained from independent pricing sources typically use information provided by market makers or bond dealers or estimates of market values obtained by reference to yield data relating to investments or securities with similar characteristics, including rating, interest rate, maturity date, option adjusted spread models, prepayment projections, interest rate spreads and yield surveys. Matrix pricing is an estimated price or value for a fixed income security. Matrix pricing is considered a form of fair value pricing, discussed below. In the event that current market valuations are not readily available or such valuations do not reflect current market value, the Trust's procedures require the Trust's Pricing Committee to determine an asset's fair value if a market price is not readily available in accordance with the

1940 Act.<sup>37</sup> In determining such value, the Trust's Pricing Committee may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators (e.g., movement in interest rates and market indices). In these cases the Fund's NAV may reflect certain portfolio assets' fair values rather than their market prices. Fair value pricing involves subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be realized upon the sale of the security.

#### Availability of Information

The Trust's Web site ([www.wisdomtree.com](http://www.wisdomtree.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>38</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

On each business day, before commencement of trading in Shares in the Core Trading Session<sup>39</sup> on the Exchange, the Trust will disclose on its Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the

holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, a portfolio composition file, which will include the security names and quantities of securities and other assets required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated prior to the opening of the Exchange via the NSCC. The portfolio will represent one Creation Unit of the Fund. Authorized Participants may refer to the portfolio composition file for information regarding SPX Puts, short-term U.S. Treasury Securities, money market instruments, and any other instrument that may comprise the Fund's portfolio on a given day.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N-CSR may be viewed on screen or downloaded from the Commission's Web site at [www.sec.gov](http://www.sec.gov). Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares and any ETPs it [sic] which it invests will be available via the Consolidated Tape Association ("CTA") high-speed line. Quotation and last sale information for U.S. exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority. The intra-day, closing and settlement prices of exchange-traded portfolio assets, including investment companies, futures and options will be readily available from the securities exchanges and futures exchanges trading such securities and futures, as the case may be, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Such price information on fixed income portfolio

<sup>37</sup> The Trust's Board has established a Pricing Committee that is composed of personnel of the Adviser. The Pricing Committee is responsible for the valuation and revaluation of any portfolio investments for which market quotations are not readily available. The Pricing Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding valuation and revaluation of any portfolio investment.

<sup>38</sup> The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>39</sup> The Core Trading Session is 9:30 a.m. to 4:00 p.m. ET.

securities, including money market instruments, and other Fund assets traded in the over-the-counter markets, including bonds and money market instruments is available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services. In addition, the value of the Index will be published by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. ET to 4:00 p.m. ET. Information about the Index constituents, the weighting of the constituents, the Index's methodology and the Index's rules will be available at no charge on the Index Provider's Web site at [www.CBOE.com](http://www.CBOE.com).

In addition, the Intraday Indicative Value ("IIV") as defined in NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(c) will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market vendors.<sup>40</sup> All Fund holdings will be included in calculating the IIV.

The dissemination of the IIV is intended to allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to approximate that value throughout the trading day. The intra-day, closing and settlement prices of the portfolio securities and other Fund investments, including futures and exchange-traded equities, ETPs and exchange-traded options, will also be readily available from the exchanges trading such instruments, automated quotation systems, published or other public sources, and, with respect to swap transactions, from third party pricing sources, or on-line information services such as Bloomberg or Reuters. The intra-day, closing and settlement prices of debt securities and money market instruments will be readily available from published and other public sources or on-line information services. Price information regarding investment company securities, including ETFs, will be available from on-line information services and from the Web site for the applicable investment company security.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosures policies, distributions and taxes is included in the Registration Statement. All terms

relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

#### Initial and Continued Listing

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index will not meet the requirements of NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(1–5) in that the Index will consist of options based on US Component Stocks (*i.e.*, SPX Puts), rather than US Component Stocks. The Index will include a minimum of 20 components and therefore, would meet the numerical requirements of NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(4) (a minimum of 13 index or portfolio components). The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3<sup>41</sup> under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and will be made available to all market participants at the same time.

#### Trading Halts

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 a Fund. Shares of each Fund will be halted if the "circuit breaker" parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

If the IIV, Index value or the value of the Index components is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange will obtain a representation from the Fund that the

NAV for the Fund will be calculated daily and will be made available to all market participants at the same time. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV for the Fund is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. ET in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

#### Surveillance

The Exchange represents that the trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>42</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-listed

<sup>40</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIV's taken from the CTA or other data feeds.

<sup>41</sup> See 17 CFR 240.10A–3.

<sup>42</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

equity securities, futures contracts, and exchange-traded options contracts with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-listed equity securities, futures contracts and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-listed equity securities, futures contracts and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>43</sup> All exchange-listed equity securities, futures contracts (and options on futures) and listed options held by the Fund will be traded on U.S. exchanges, all of which are members of ISG or are exchanges with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading of Shares in the Fund, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV or Index value will not be calculated or publicly disseminated; (4) how information regarding the IIV and Index value will be disseminated; (5) the requirement that ETP Holders deliver a prospectus to

investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. ET each trading day.

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>44</sup> that an exchange have rules that 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 5.2(j)(3), Commentary .01, except that the Index will consist of SPX Puts, which are based on an index of US Component Stocks, rather than US Component Stocks themselves. The Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to deter and detect violations of Exchange rules and applicable federal securities laws relating to trading on the Exchange. FINRA and the Exchange, as applicable, may each obtain information via ISG from other exchanges that are members of ISG, and in the case of the Exchange, from other market or entities with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The Index Provider is not registered as an investment adviser or broker-dealer and is not affiliated with any broker-dealers. The Adviser is not registered as, or affiliated with, any broker-dealer. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented a "fire wall" with respect to such broker-dealers and their personnel regarding access to information concerning the composition and/or changes to the Index. In addition, Sub-Adviser personnel who

make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. The Adviser and the Index Provider have represented that a fire wall exists around the respective personnel who have access to information concerning changes and adjustments to the Index. All exchange-listed equity securities, ETPs, options and futures contracts held by the Fund will be traded on U.S. exchanges, all of which are members of ISG or are exchanges with which the Exchange has in place a comprehensive surveillance sharing agreement.

Under normal market conditions, not less than 80% of the Fund's total assets will be comprised of SPX Puts and short-term U.S. Treasury securities, although the Fund may also invest in other U.S. government and money market instruments and in derivative instruments such as listed futures contracts and options on futures, each on the S&P 500 Index (including E-mini S&P 500 Futures), S&P 500 ETF put options and total return swap agreements on the Index, designed to create a position in put options and short-term U.S. Treasury securities. The Fund may invest up to 10% of its net assets in OTC S&P 500 Index put options. The Fund's investments in listed futures contracts and total return swap agreements will be backed by investments in U.S. government securities in an amount equal to the exposure of such contracts. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser or Sub-Adviser, consistent with Commission guidance. The Fund therefore will not use derivative instruments to enhance leverage. The Fund will not invest in non-U.S. equity securities.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily every day the NYSE is open, and that the NAV will be made available to all market participants at the same time. In addition, a large amount of publicly available information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency.

Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15

<sup>43</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all of the components of the portfolio for the Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>44</sup> 15 U.S.C. 78f(b)(5).

seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in the Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotations and last sale information will be available via the CTA high-speed line. Information relating to U.S. exchange-listed options is available via the Options Price Reporting Authority. Quotation and last sale information for the Shares and any ETPs in which it invests will be available via the CTA high-speed line. Quotation and last sale information for U.S. exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority. The intra-day, closing and settlement prices of exchange-traded portfolio assets, including investment companies, futures and options will be readily available from the securities exchanges and futures exchange trading such securities and futures, as the case may be, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Such price information on fixed income portfolio securities, including money market instruments, and other Fund assets traded in the over-the-counter markets, including bonds and money market instruments is available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services. The Web site for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading the Shares inadvisable. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Fund's portfolio,

and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-traded equity securities, ETPs, futures contract and exchange-traded options contracts with other market and other entities that are members of ISG, and FINRA, on behalf of the Exchange, may obtain trading information in the Shares, exchange-traded equity securities, ETPs, futures contracts and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-traded equity securities, ETPs, futures contracts and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, and quotation and last sale information for the Shares.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of Investment Company Unit that will enhance competition among market participants, to the benefit of investors and the marketplace.

#### *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 (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.

### **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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2015-05 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2015-05. 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–2015–05 and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>45</sup>

**Brent J. Fields,**

Secretary.

[FR Doc. 2015–03661 Filed 2–23–15; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74285; File No. SR–BATS–2015–11]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for the BATS One Feed, and Amend Fees for BZX Top and BZX Last Sale

February 18, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on February 3, 2015, BATS Exchange, Inc. (“BATS” 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 Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b–4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend its fee schedule to establish fees for the BATS One Feed, amend fees for

BZX Top and BZX Last Sale, add definitions for terms that apply to market data fees, and make certain technical, non-substantive changes.

The text of the proposed rule change is available at the Exchange’s Web site at <http://www.batstrading.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its fee schedule to establish fees for the BATS One Feed, amend fees for BZX Top and BZX Last Sale, add definitions for terms that apply to market data fees, and make certain technical, non-substantive changes.

###### Technical, Non-Substantive Changes

The Exchange proposes the following technical, non-substantive amendments to its fee schedule regarding its existing market data fees. The Exchange proposes to rename the section entitled “BZX Exchange PITCH Feed” as the “BZX Depth”, “BZX Exchange Top Feed” as “BZX Top”, “BZX Exchange Last Sale Feed” as “BZX Last Sale”, “BZX Exchange Historical TOP” as “BZX Historical Top”, and “Historical PITCH” as “Historical Depth.” The Exchange does not propose to amend the content of these market data products; nor does the Exchange propose to amend the fees for these products, other than for BZX Top and BZX Last Sale as described below.

###### Definitions Applicable to Market Data Fees

The Exchange proposes to include in its fee schedule the following defined terms that relate to the Exchange’s market data fees. The proposed definitions are designed to provide greater transparency with regard to how

the Exchange assesses fees for market data. The Exchange notes that none of the proposed definitions are designed to amend any fee, nor alter the manner in which it assesses fees.

First, the Exchange proposes to define a “Distributor” as “any entity that receives an Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.”<sup>5</sup> In turn, an Internal Distributor and External Distributor will be separately defined. An Internal Distributor will be defined as a “Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own entity.”<sup>6</sup> An External Distributor will be defined as a “Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity.”<sup>7</sup>

Secondly, the Exchange proposes to add a definition of “User” to its fee schedule. A User will be defined as a “natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.” For purposes of its market data fees, the Exchange will distinguish between “Non-Professional Users” and “Professional Users.” Specifically, a Non-Professional User will be defined as “a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association; any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that will require registration or qualification if such functions were performed for an organization not so exempt.”<sup>8</sup> A Professional User will be defined as

<sup>5</sup> The proposed definition of “Distributor” is similar to Nasdaq Rule 7047(d)(1).

<sup>6</sup> The proposed definition of “Internal Distributor” is similar to Nasdaq Rule 7047(d)(1)(A).

<sup>7</sup> The proposed definition of “External Distributor” is similar to Nasdaq Rule 7047(d)(1)(B).

<sup>8</sup> The proposed definition of “Professional User” is similar to Nasdaq Rule 7047(d)(3)(A).

<sup>45</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b–4(f)(2).

“any User other than a Non-Professional User.”<sup>9</sup>

#### BZX Top and BZX Last Sale

The cost of BZX Last Sale for an Internal Distributor is \$500 per month. Likewise, the cost of BZX Top for an Internal Distributor is \$500 per month. The Exchange does not charge per User fees for either BZX Last Sale or BZX Top. Therefore, the Exchange does not require an External Distributor of BZX Last Sale or BZX Top to count, classify (e.g., professional or non-professional) or report to the Exchange information regarding the customers to which they provide the data. Instead, the Exchange currently charges an External Distributor of BZX Last Sale a flat fee of \$2,500 per month. The Exchange also currently separately charges an External Distributor of BZX Top a flat fee of \$2,500 per month. End Users do not pay the Exchange for BZX Last Sale or BZX Top, nor are end Users required to enter into contracts with the Exchange.

The Exchange proposes to now allow subscribers to either BZX Top or BZX Last Sale to also receive, upon request and at no additional cost, BZX Last Sale or BZX Top, as applicable. The Exchange also proposes to establish a New External Distributor Credit under which new External Distributors of BZX Top or BZX Last Sale will not be charged a Distributor Fee for their first three (3) months. The Exchange believes that the proposed pricing model is simple and easy for data recipients to comply with, and thus, will continue to result in a minimal additional administrative burden for data recipients who elect to receive both BZX Last Sale and BZX Top at no additional cost.

#### BATS One Feed

The Commission recently approved a proposed rule change by the Exchange to establish a new market data product called the BATS One Feed.<sup>10</sup> The BATS One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (“BBO”) of all displayed orders for securities traded on BZX and its affiliated exchanges<sup>11</sup>

and for which the BATS Exchanges report quotes under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan.<sup>12</sup> The BATS One Feed also contains the individual last sale information for the BATS Exchanges (collectively with the aggregate BBO, the “BATS One Summary Feed”). In addition, the BATS One Feed contains optional functionality which will enable recipients to elect to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels for all securities that are traded on the BATS Exchanges in addition to the BATS One Summary Feed (“BATS One Premium Feed”). For each price level on one of the BATS Exchanges, the BATS One Premium Feed will include a two-sided quote and the number of shares available to buy and sell at that particular price level.

The Exchange uses the following data feeds to create the BATS One Summary Feed and the BATS One Premium Feed, each of which is available to other vendors: EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, and each of which have been previously published by the Commission.<sup>13</sup> A vendor that wishes to create a product like the BATS One Summary Feed could instead subscribe to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale.<sup>14</sup> The BATS

together with EDGX, BZX, and BYX, the “BATS Exchanges”). On January 23, 2014, BATS Global Markets, Inc. (“BGMI”), the former parent company of the Exchange and BYX, completed its business combination with Direct Edge Holdings LLC, the parent company of EDGA and EDGX. See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039). Upon completion of the business combination, DE Holdings and BGMI each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named “BATS Global Markets Holdings, Inc.,” changed its name to “BATS Global Markets, Inc.” and BGMI changed its name to “BATS Global Markets Holdings, Inc.”

<sup>12</sup> The Exchange understands that each of the BATS Exchanges will separately file substantially similar proposed rule changes with the Commission to implement fees for the BATS One Feed.

<sup>13</sup> See Securities Exchange Act Release Nos. 66864 (April 26, 2012), 77 FR 26064 (May 2, 2012) (SR-EDGX-2012-14); 66863 (April 26, 2012), 77 FR 26059 (May 2, 2012) (SR-EDGA-2012-15); 69936 (July 3, 2013), 78 FR 41483 (July 10, 2013) (SR-BATS-2013-39); 69935 (July 3, 2013), 78 FR 47447 (July 10, 2013) (SR-BYX-2013-023). See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22(a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

<sup>14</sup> See Securities Exchange Act Release Nos. 73990 (January 5, 2015) (SR-EDGA-2014-35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Top and Last Sale Data Feeds); 73989 (January 5, 2015) (SR-EDGX-2014-36) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt

Exchanges are the exclusive distributors of these individual data feeds from which certain data elements are taken to create the BATS One Feed as well as the feeds that a vendor may use to create a product like the BATS One Summary Feed. By contrast, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that comprises the BATS One Feed. Any entity that receives, or elects to receive [sic], the individual data feeds or the feeds that may be used to create a product like the BATS One Feed would be able to, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients.<sup>15</sup>

The Exchange proposes to amend its fee schedule to incorporate fees related to the BATS One Feed. The Exchange proposes to charge different fees to vendors depending on whether the vendor elects to receive: (i) The BATS One Summary Feed; or (ii) the optional BATS One Premium Feed. These fees include the following, each of which are described in detail below: (i) Distributor Fees;<sup>16</sup> (ii) Usage Fees for both Professional and Non-Professional Users;<sup>17</sup> (iii) Enterprise Fees;<sup>18</sup> and (iv)

Top and Last Sale Data Feeds). See also BZX and BYX Rules 11.22(d) and (g).

<sup>15</sup> See BATS One Approval Order, *supra* note 10. The Exchange notes that a vendor can obtain the underlying depth-of-book feeds as well as EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale on the same latency basis as the Exchange would receive the underlying depth-of-book feeds necessary to create the BATS One Feed, including the BATS One Summary Feed. *Id.*

<sup>16</sup> The Exchange notes that Distributor Fees as well as the distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. See Nasdaq Rule 7019(b); see also Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR-PHLX-2010-120); Securities Exchange Act Release Nos. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR-NASDAQ-2010-110); 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR-NASDAQ-2008-102); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR-BX-2010-081).

<sup>17</sup> The Exchange notes that User fees as well as the distinctions based on professional and non-professional users have been previously filed with or approved by the Commission by Nasdaq and the New York Stock Exchange, Inc. (“NYSE”). See Securities Exchange Act Release Nos. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR-NASDAQ-2008-102).

<sup>18</sup> The Exchange notes that Enterprise fees have been previously filed with or approved by the Commission by Nasdaq, NYSE and the CTA/CQ Plans. See Nasdaq Rule 7047. Securities Exchange Act Release Nos. 71507 (February 7, 2014), 79 FR

Continued

<sup>9</sup> The proposed definition of “Non-Professional User” is similar to Nasdaq Rule 7047(d)(3)(B).

<sup>10</sup> See Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the BATS One Feed) (“BATS One Approval Order”).

<sup>11</sup> The Exchange’s affiliated exchanges are EDGA Exchange, Inc. (“EDGA”), EDGX Exchange, Inc. (“EDGX”), and BATS Y-Exchange, Inc. (“BYX”),

a Data Consolidation Fee. The amount of each fee may differ depending on whether they use the BATS One Feed data for internal or external distribution. Vendors that distribute the BATS One Feed data both internally and externally will be subject to the higher of the two Distributor Fees.

**Internal Distributor Fees.** As proposed, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of \$10,000 per month. The Exchange also proposes that each Internal Distributor shall pay a fee of \$15,000 per month where they elect to receive the BATS One Premium Feed. The Exchange does not propose to charge any User fees for the BATS One Feed where the data is received and subsequently internally distributed to Professional or Non-Professional Users.

**External Distributor Fees.** The Exchange proposes to charge those firms that distribute the BATS One Feed externally a fee of \$5,000 per month for the BATS One Summary Feed. As proposed, each External Distributor shall pay a fee of \$12,500 per month where they elect to receive the BATS One Premium Feed.

The BATS One Feed is comprised of data included in EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.<sup>19</sup> Currently, an External Distributor could create a competing product to the BATS One Premium Feed<sup>20</sup> by purchasing the [sic] each of these depth of book products from the individual BATS Exchanges and then performing its own aggregation and consolidation functions. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is \$12,500 per month,<sup>21</sup> equal to the \$12,500 per month External Distributor Fee proposed for the BATS One Premium Feed. An External Distributor that seeks to create a competing product to the BATS One Summary Feed could instead subscribe to the following data feeds: EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last

Sale, BYX Top, and BYX Last Sale,<sup>22</sup> and then perform their own aggregation and consolidation function. The combined External Distributor fees for these individual data feeds of the BATS Exchanges is \$5,000 per month,<sup>23</sup> equal to the \$5,000 per month External Distributor Fee proposed for the BATS One Summary Feed. To ensure that vendors could compete with the Exchange by creating the same product as the BATS One Feed and selling it to their clients, the Exchange proposes to charge External Distributors an External Distributor fee that equals the combined External Distributor fees for each of the individual feeds listed above.

The Exchange also proposes to establish a New External Distributor Credit under which new External Distributors of the BATS One Summary Feed will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the BATS One Feed.<sup>24</sup> The New External Distributor Fee Credit will not be available to External Distributors of the BATS One Premium Feed. The Exchange does not believe the New External Distributor Credit would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

#### User Fees

In addition to Internal and External Distributor Fees, the Exchange proposes to charge those who receive the BATS One Feed from External Distributors

different fees for both their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of \$10.00 per User for receipt of the BATS One Summary Feed or \$15.00 per User who elects to also receive the BATS One Premium Feed. Non-Professional Users will be assessed a monthly fee of \$0.25 per user for the BATS One Summary Feed or \$0.50 per user where they elect to receive the BATS One Premium Feed.

External Distributors must count every Professional User and Non-Professional User to which they provide BATS One Feed data. Thus, the Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data.<sup>25</sup> Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with an External Distributor's distribution of the BATS One Feed, the Distributor should count as one User each unique User that the Distributor has entitled to have access to the BATS One Feed. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.
- The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to the BATS One Feed, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to the BATS One Feed (e.g., a single User has multiple passwords and user identifications), the External Distributor should report all of those methods as an individual User.
- External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.
- If an External Distributor entitles one or more individuals to use the same device, the External Distributor should include only the individuals, and not the device, in the count.

8763 (February 13, 2014) (SR-NASDAQ-20140011); 70211 (August 15, 2013), 78 FR 51781 (August 21, 2013) (SR-NYSE-2013-58); 70010 (July 19, 2013) (File No. SR-CTA/CQ-2013-04).

<sup>19</sup> See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22(a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

<sup>20</sup> Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to separately purchase the top and last sale feeds from each of the BATS Exchanges.

<sup>21</sup> The monthly External Distributor fee is \$2,500 per month for EDGX Depth, \$2,500 per month for EDGA Depth, \$2,500 for BYX Depth, and \$5,000 for BZX Depth.

<sup>22</sup> See *supra* note 14. See also BATS Rule 11.22(d) and (g).

<sup>23</sup> The monthly External Distributor fee is \$1,250 per month for EDGX Top and EDGX Last Sale, free for EDGA Top and EDGA Last Sale, \$1,250 for BYX Top and BYX Last Sale, and \$2,500 for BZX Top and BZX Last Sale. See SR-EDGA-2015-01, SR-EDGX-2015-09, and SR-BYX-2015-09. See also the BZX Fee Schedule available at [http://www.batstrading.com/support/fee\\_schedule/bzx/](http://www.batstrading.com/support/fee_schedule/bzx/).

<sup>24</sup> The Exchange notes that just as a third party vendor could choose to offer special pricing in order to incentivize data recipients to perform necessary development and other work in order to receive and distribute a new data product, the Exchange has proposed pricing to incentivize data recipients to take and distribute the BATS One Feed.

<sup>25</sup> Requiring that every person or device to which they provide the data is counted by the Distributor receiving the BATS One Feed is similar to the NYSE Unit-of-Count Policy. The only difference is that the NYSE Unit-of-Count Policy requires the counting of users receiving a market data product through both internal and external distribution. Because the Exchange proposes to charge Usage Fees solely to recipient firms who's Users receive data from an external distributor and not through internal distribution, it only requires the counting of Users by Distributors that disseminate the BATS One Feed externally.



Each External Distributor will receive a credit against its monthly Distributor Fee for the BATS One Feed equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for the BATS One Feed. For example, an External Distributor will be subject to a \$12,500 monthly Distributor Fee where they elect to receive the BATS One Premium Feed. If that External Distributor reports User quantities totaling \$12,500 or more of monthly usage of the BATS One Premium Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling \$11,500 of monthly usage, it will pay a net of \$1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above. In every case the Exchange will receive at least \$12,500 in connection with the distribution of the BATS One Feed (through a combination of the External Distribution Fee and per User Fees).

*Enterprise Fee.* The Exchange also proposes to establish a \$50,000 per month Enterprise Fee that will permit a recipient firm who receives the BATS Summary Feed portion of the BATS One Feed from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users and \$100,000 per month for recipient firms who elect to receive the BATS One Premium Feed. For example, if a recipient firm had 15,000 Professional Users who each receive the BATS One Summary Feed portion of the BATS One Feed at \$10.00 per month, then that recipient firm will pay \$150,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of \$50,000 for an unlimited number of Professional and Non-Professional Users for the BATS Summary Feed portion of the BATS One Feed. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls display of the BATS One Feed if it wishes such User to be covered by an Enterprise Fee rather than by per-User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users. The Enterprise Fee would be in addition to the applicable Distributor Fee.

#### Data Consolidation Fee

The Exchange also proposes to charge External Distributors of the BATS One Feed a separate Data Consolidation Fee, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. As stated above, the Exchange creates the BATS One Feed from data derived from the EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.<sup>26</sup> The Exchange notes that an External Distributor could create a competing product to the BATS One Feed based on these individual data feeds, or, alternatively, the applicable Top and Last Sale products offered by the Exchanges, and could charge its clients a fee that it believes reflects the value of the aggregation and consolidation function. The Exchanges [sic] believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. For these reasons, the Exchange believes that vendors could readily offer a product similar to the BATS One Feed on a competitive basis at a similar cost.

The Exchange does not propose to charge Internal Distributors the separate Data Consolidation Fee as the proposed Internal Distributor Fees are greater than the cost of subscribing to each of the underlying individual feeds. As discussed above, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of \$10,000 per month, as compared to \$5,000, which is the total of the underlying feeds.<sup>27</sup> Each Internal Distributor shall pay a fee of \$15,000 per month where they elect to receive the BATS One Premium Feed, as compared to \$12,500, which is the total cost of the underlying depth feeds.<sup>28</sup> The increased cost of the BATS One Feed is designed to include the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. Therefore, the Exchange does not propose to charge Internal Distributors a separate Data Consolidation Fee.

<sup>26</sup> See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22(a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

<sup>27</sup> See *supra* note 23.

<sup>28</sup> See *supra* note 21.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>29</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>30</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

#### Technical, Non-Substantive Changes

The Exchange believes that the non-substantive changes to its fee schedule are reasonable because they are non-substantive changes that are designed to amend any fee, nor alter the manner in which it assesses fees. These non-substantive, technical changes to the fee schedule are intended to streamline the naming convention of the Exchange's market data products, making the fee schedule clearer and less confusing for investors, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

#### Definitions Applicable to Market Data Fees

The Exchange believes that the proposed definitions are reasonable because they are designed to provide greater transparency to Members with regard to how the Exchange assesses fees for market data. The Exchange notes that none of the proposed definitions are designed to amend any fee, nor alter the manner in which it assesses fees. The Exchange believes that Members would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would assess fees. These definitions are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Lastly, the proposed definitions are based on existing rules of

<sup>29</sup> 15 U.S.C. 78f.

<sup>30</sup> 15 U.S.C. 78f(b)(4).

the Nasdaq Stock Market LLC (“Nasdaq”).<sup>31</sup>

#### BZX Top and BZX Last Sale

The Exchange believes that its amended fees for BZX Last Sale and BZX Top are consistent with Section 6(b)(4) of the Act<sup>32</sup> because they provide for an equitable allocation of reasonable dues, fees, and other charges among its members and other recipients of Exchange data. The Exchange also believes the proposed fees for BZX Last Sale and BZX Top are reasonable and equitable in light of the benefits to data recipients. The Exchange believes the proposed fee change is equitable and reasonable in that subscribers to either BZX Top or BZX Last Sale would be able to also receive, upon request and at no additional cost, BZX Last Sale or BZX Top, as applicable, resulting in a fee reduction. The Exchange believes that the proposed pricing is simple and easy for data recipients to comply with, and thus, will result in a minimal additional administrative burden for data recipients who elect to receive both BZX Last Sale and BZX Top at no additional cost. BZX Last Sale and BZX Top are distributed and purchased on a voluntary basis, in that neither the Exchanges nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Lastly, the Exchange also believes that the proposed amendments to its fee schedule are reasonable and non-discriminatory because it [sic] will apply uniformly to all Members.

#### BATS One Feed

The Exchange also believes that the proposed fees for the BATS One Feed are consistent with Section 6(b) of the Act,<sup>33</sup> in general, and Section 6(b)(4) of the Act,<sup>34</sup> in particular, in that it [sic] they provide for an equitable allocation of reasonable fees among Users and recipients of the data and are not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also

believes that the proposed rule change is consistent with Section 11(A) of the Act<sup>35</sup> in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,<sup>36</sup> which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange’s customers and market data vendors will be subject to the proposed fee structure on an equivalent basis. The BATS One Feed would be distributed and purchased on a voluntary basis, in that neither the BATS Exchanges nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. In addition, any customer that wishes to purchase one or more of the individual data feeds offered by the BATS Exchanges would be able to do so.

The Exchange has taken into consideration its affiliated relationship with EDGA, BYX, and EDGX in its design of the BATS One Feed to assure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the BATS One Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the BATS One Feed. Any entity that receives, or elects to receive, the individual data feeds would be able to, if it so chooses, to create a data feed with the same information included in the BATS One

Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients with no greater cost than the Exchange.<sup>37</sup>

In addition, vendors and subscribers that do not wish to purchase the BATS One Feed may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the BATS One Feed. To enable such competition, the Exchange is offering the BATS One Feed on terms that a subscriber of those underlying feeds could offer a competing product if it so chooses.

The Exchange notes that the use of the BATS One Feed is entirely optional. Firms have a wide variety of alternative market data products from which to choose, including the Exchanges’ own underlying data products, the Nasdaq and the NYSE proprietary data products described in this filing,<sup>38</sup> and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange’s Statement on Burden on Competition, the existence of alternatives to the BATS One Feed further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute the BATS One Feed, prospective Users likely would not subscribe to, or would cease subscribing to, the BATS One Feed. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the BATS One Feed into the vendor’s own comparable market

<sup>31</sup> The proposed definition of “Distributor” is similar to Nasdaq Rule 7047(d)(1). The proposed definition of “Internal Distributor” is similar to Nasdaq Rule 7047(d)(1)(A). The proposed definition of “External Distributor” is similar to Nasdaq Rule 7047(d)(1)(B). The proposed definition of “Professional User” is similar to Nasdaq Rule 7047(d)(3)(A). The proposed definition of “Non-Professional User” is similar to Nasdaq Rule 7047(d)(3)(B).

<sup>32</sup> 15 U.S.C. 78f(b)(4).

<sup>33</sup> 15 U.S.C. 78f.

<sup>34</sup> 15 U.S.C. 78f(b)(4).

<sup>35</sup> 15 U.S.C. 78k–1.

<sup>36</sup> See 17 CFR 242.603.

<sup>37</sup> See BATS One Approval Order, *supra* note 10. The Exchange notes that a vendor can obtain the underlying depth-of-book feeds as well as EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale on the same latency basis as the Exchange would receive the underlying depth-of-book feeds necessary to create the BATS One Feed, including the BATS One Summary Feed. *Id.*

<sup>38</sup> See *infra* note 52.

data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective Users would avail themselves of that lower cost and elect not to take the BATS One Feed.

The Exchange notes that the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.<sup>39</sup>

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

*User Fees.* The Exchange believes that implementing the Professional and Non-Professional User fees for the BATS One Feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for the BATS One Feed is reasonable because it provides an additional method for retail investors to access the BATS One Feed data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of

differentiated Professional and Non-Professional fees has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.<sup>40</sup> Offering the BATS One Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

In addition, the proposed fees are reasonable when compared to fees for comparable products offered by the NYSE, Nasdaq, and under the CTA and CQ Plans. Specifically, Nasdaq offers Nasdaq Basic, which includes best bid and offer and last sale data for Nasdaq and the FINRA/Nasdaq TRF, for a monthly fee of \$26 per professional subscriber and \$1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of \$350,000 per month for internal distribution to an unlimited number of professional users or \$365,000 per month for external distribution for up to 16,000 professional users, plus \$2 for each additional professional user over 16,000.<sup>41</sup> The NYSE offers BQT, which provides BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT. To obtain BQT, subscribers must purchase the [sic] each underlying data feed for a monthly fee of \$18 per professional subscriber and \$1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of \$365,000 per month for an unlimited number of professional users. The NYSE does not offer an enterprise license for non-professional users. The Exchange's proposed per-User Fees are lower than the NYSE's and Nasdaq's fees. In addition, the Exchange is proposing Professional and Non-Professional User fees and Enterprise Fees that are less than the fees currently charged by the CTA and CQ Plans. Under the CTA and CQ Plans, Tape A consolidated last sale and bid-ask data are offered together for a monthly fee of \$20–\$50 per device, depending on the number of professional subscribers, and \$1.00 per non-professional subscriber, depending on the number of non-professional subscribers.<sup>42</sup> A monthly enterprise fee of \$686,400 is available under which a U.S. registered broker-dealer may

distribute data to an unlimited number of its own employees and its non-professional subscriber brokerage account customers. Finally, in contrast to Nasdaq UTP and the CTA and CQ Plans, the Exchange also will permit enterprise distribution by a non-broker-dealer.

*Enterprise Fee.* The proposed Enterprise Fee for the BATS One Feed is reasonable as the fee proposed is less than the enterprise fees currently charged for underlying data feeds for NYSE BQT, Nasdaq Basic, and consolidated data distributed under the Nasdaq UTP and the CTA and CQ Plans. In addition, the Enterprise Fee could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of the BATS One Feed, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the BATS One Feed, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of users.

*Distributor Fee.* The Exchange believes that the proposed Distributor Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution.<sup>43</sup> The Exchange believes

<sup>39</sup> The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

<sup>40</sup> See, e.g., Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983) (establishing nonprofessional fees for CTA data); Nasdaq Rules 7023(b), 7047.

<sup>41</sup> See Nasdaq Rule 7047.

<sup>42</sup> See CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at <https://cta.nyxdata.com/CTA>.

<sup>43</sup> The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. See Nasdaq Rule 019(b); see also Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR-PHLX-2010-120);

that the Distributor Fees for the BATS One Feed are reasonable and fair in light of alternatives offered by other market centers. First, although the Internal Distributor fee is higher than those of competitor products, there are no User fees assessed for Users that receive the BATS One Feed data through an Internal Distributor, which results in a net cost that is lower than competitor products for many data recipients and will be easier to administer.

The proposed Distributor Fees for the BATS One Feed are also designed to ensure that vendors could compete with the Exchange by creating a similar product as the BATS One Feed. The Exchange believes that the proposed Distributor Fees are equitable and reasonable as it [sic] equals the combined fee of subscribing to each individual data feed of the BATS Exchanges, which have been previously published by the Commission.<sup>44</sup>

Currently, an External Distributor that seeks to create a competing product to the BATS One Premium Feed<sup>45</sup> would need to purchase each of the depth of book products from the individual BATS Exchanges and then perform its own aggregation and consolidation functions.<sup>46</sup> The combined external distributor fees for these individual depth of book feeds of the BATS Exchanges is \$12,500 per month,<sup>47</sup> equal to the \$12,500 per month External Distributor Fee proposed for the BATS One Premium Feed. An External Distributor that seeks to create a competing product to the BATS One Summary Feed could alternatively subscribe to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top, and BYX Last Sale, and then perform their own aggregation and consolidation function. The combined external distributor fees for these individual data feeds of the BATS Exchanges is \$5,000 per month,<sup>48</sup> equal to the \$5,000 per month External Distributor Fee proposed for the BATS

One Summary Feed. In addition, the Exchange believes it is reasonable to not charge External Distributors a Distribution Fee during their first three (3) months and does not believe this would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange.

Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

#### Data Consolidation Fee

The Exchange believes that the proposed \$1,000 per month Data Consolidation Fee charged to External Distributors who receive the BATS One Feed is reasonable because it represents the value of the data aggregation and consolidation function that the Exchange performs. The Exchange also notes that its proposed \$1,000 per month Data Consolidation Fee is identical to an access fee charged by the NYSE for BQT, which is also designed to represent the value of the data aggregation function provided by the NYSE in constructing its BQT feed.<sup>49</sup>

The Exchange further believes the proposed Data Consolidation Fee is not designed to permit unfair discrimination because all External Distributor who subscribe to the BATS One Feed will be charged the same fee. The Exchange believes it is reasonable and not unfairly discriminatory to not charge Internal Distributor a separate Data Consolidation Fee as the proposed Internal Distributor Fees are greater than the cost of subscribing to each of the underlying individual feed. As discussed above, each Internal Distributor that receives only the BATS One Summary Feed shall pay a fee of \$10,000 per month as compared to \$5,000, which is the total of the underlying feeds.<sup>50</sup> Each Internal Distributor shall pay a fee of \$15,000 per month where they elect to receive the BATS One Premium Feed as compared

to \$12,500, which is the total cost of the underlying depth feeds.<sup>51</sup> The increased cost of the BATS One Feed is designed to include the value of the aggregation and consolidation function the Exchange performs in creating the BATS One Feed. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee is reasonable would not permit unfair discrimination.

In addition, a vendor could create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with the BATS One Feed pricing. The Exchange believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. Therefore, the Exchange believes the proposed pricing would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with BATS One Feed pricing as discussed further below.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

#### Technical, Non-Substantive Changes

The proposed name changes to the Exchange's market data products will not result in any burden on competition. The proposed amendments are not designed to address and competitive issues, but rather provide consistency amongst the naming conventions used for the Exchange market data products, resulting in additional clarity and transparency to Members, Users, and the investing public regarding the Exchange's market data products. The Exchange notes that none of the proposed non-substantive changes are designed to amend any fee, nor alter the manner in which it assesses fees. These non-substantive, technical changes to the fee schedule are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion.

Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR-NASDAQ-2010-110); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR-BX-2010-081).

<sup>44</sup> See *supra* notes 13 and 14.

<sup>45</sup> Like the Exchange, an External Distributor would also be able to create a competing product to the BATS One Summary Feed from the data received via EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth, without having to separately purchase the top and last sale feeds from each of the BATS Exchanges.

<sup>46</sup> As discussed, the Exchange proposes to charge External Distributors a separate Data Consolidation Fee to reflect the value of the consolidation function performed by the Exchange.

<sup>47</sup> See *supra* note 23.

<sup>48</sup> See *supra* note 21.

<sup>49</sup> See Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

<sup>50</sup> See *supra* note 23.

<sup>51</sup> See *supra* note 21.

### Definitions Applicable to Market Data Fees

The proposed definitions applicable to market data fees will not result in any burden on competition. The proposed definitions are not designed to amend any fee, nor alter the manner in which it assesses fees. The Exchange believes that Members would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would assess fees for market data. These definitions are intended to make the Fee Schedule clearer and less confusing for investors and are not designed to have a competitive impact.

### BZX Top and BZX Last Sale

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price BZX Last Sale and BZX Top are constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, BZX Last Sale and BZX Top compete with a number of alternative products. For instance, BZX Last Sale and BZX Top do not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks ("ECN") that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to BZX last sale prices and top-of-book quotations though integrated with the prices of other

markets on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to BZX Last Sale and BZX Top, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

### BATS One Feed

The BATS One Feed will enhance competition because it not only provides content that is competitive with the similar products offered by other exchanges, but will provide pricing that is competitive as well. The BATS One Feed provides investors with an alternative option for receiving market data and competes directly with similar market data products currently offered by the NYSE and Nasdaq.<sup>52</sup> As

<sup>52</sup> See Nasdaq Basic, <http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic> (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility ("TRF")); Nasdaq NLS Plus, <http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus> (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and

previously stated, the fees for the BATS One Feed are significantly lower than alternative exchange products. The BATS One Feed is less expensive per professional user and more than 85% less expensive for an enterprise license for professional users (50% less for non-professional users) when compared to a similar competitor exchange product, offering firms a lower cost alternative for similar content.

Although the BATS Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the BATS One Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed BATS One Feed. Any entity that receives, or elects to receive, the underlying data feeds would be able to, if it so chooses, to create a data feed with the same information included in the BATS One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the BATS One Feed would be received by those same clients at a similar cost.<sup>53</sup>

The proposed pricing the Exchange would charge clients for the BATS One Feed compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The pricing the Exchange would charge for the BATS One Feed would not be lower than the cost to a vendor of receiving the underlying data feeds. The pricing the Exchange would charge clients for the BATS One Feed compared to the cost of the individual data feeds from the BATS Exchanges would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The Distributor Fees that the Exchange intends to propose for the BATS One Feed would not be less than the combined fee of subscribing to each individual data feed.<sup>54</sup> In addition, the

Nasdaq OMX PSX); Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR-NYSE-2014-40) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No.1, To Establish the NYSE Best Quote & Trades ("BQT") Data Feed); <http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades> (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

<sup>53</sup> See BATS One Approval Order, *supra* note 10.

<sup>54</sup> The combined external distribution fee for the individual depth of book data feeds of the BATS

Exchange believes that not charging External Distributors a Distribution Fee during their first three (3) months would not impede a vendor from creating a competing product. Specifically, a vendor seeking to create the BATS One Summary Feed could do so by subscribing to EDGX Top, EDGX Last Sale, EDGA Top, EDGA Last Sale, BZX Top, BZX Last Sale, BYX Top and BYX Last Sale, all of which are either free or also include a New External Distributor Credit identical to that proposed for the BATS One Summary Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period and offer a competing product on a similar basis as the Exchange.

The Exchange further believes that its proposed monthly Data Consolidation Fee would be pro-competitive because it is identical to a similar fee charged by the NYSE for its BQT feed and a vendor could create a competing product, perform a similar aggregating and consolidating function, and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product. The Exchanges believes that the incremental cost to a particular vendor for aggregation can be supported by the vendor's revenue opportunity and may be inconsequential if such vendor already has systems in place to perform these functions as part of creating its proprietary market data products and is able to allocate these costs over numerous products and customer relationships. For these reasons, the Exchange believes the proposed pricing, including the New External Distributor Fee Credit, would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with BATS One Feed pricing.

Finally, the Exchange notes that there is already actual competition for products similar to the BATS One Feed. The NYSE offers BQT which provides

Exchanges is \$12,500.00 per month. The monthly External Distributor fee is \$2,500 per month for the EDGX Depth, \$2,500 per month for the EDGA Depth, \$2,500 for BYX Depth, and \$5,000 for BZX Depth. The combined external distribution fee for the individual top and last sale data feed of the BATS Exchanges is \$5,000.00 per month. The monthly External Distributor fee is \$1,250 per month for EDGX Top and EDGX Last Sale, free for EDGA Top and EDGA Last Sale, \$1,250 for BYX Top and BYX Last Sale, and \$2,500 for BZX Top and BZX Last Sale. See SR-EDGA-2015-09, SR-EDGX-2015-09, and SR-BYX-2015-09. See also the BZX Fee Schedule available at [http://www.batstrading.com/support/fee\\_schedule/bzx/](http://www.batstrading.com/support/fee_schedule/bzx/).

BBO and last sale information for the NYSE, NYSE Arca Equities, Inc. and NYSE MKT LLC.<sup>55</sup> Nasdaq already offers Nasdaq Basic, a filed market data product, and through its affiliate, offers NLS Plus which provides a unified view of last sale information similar to the BATS One Feed.<sup>56</sup> The existence of these competing data products demonstrates that there is ample, existing competition for products such as the BATS One Feed and the fees associated by such products is constrained by competition.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to the BATS One Feed, including the existing underlying feeds, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>57</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>58</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2015-11 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-BATS-2015-11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2015-11 and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>59</sup>

<sup>55</sup> See *supra* note 52.

<sup>56</sup> *Id.*

<sup>57</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>58</sup> 17 CFR 240.19b-4(f)(2).

<sup>59</sup> 17 CFR 200.30-3(a)(12).

**Brent J. Fields,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74288; File No. SR-MIAX-2015-08]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

February 18, 2015.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 5, 2015, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule. The text of the proposed rule change is available on the Exchange’s Web site at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX’s principal office, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend the Priority Customer Rebate Program (the “Program”) <sup>3</sup> to amend the option classes that qualify for the enhanced per contract credit for transactions in MIAX Select Symbols.<sup>4</sup>

Under the Program, the Exchange credits each Member the per contract amount set forth in the Fee Schedule resulting from each Priority Customer <sup>5</sup> order transmitted by that Member which is executed on the Exchange in all multiply-listed option classes (excluding mini-options, Priority Customer-to-Priority Customer Orders, PRIME AOC Responses, PRIME Contra-side Orders, PRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400), provided the Member meets certain volume thresholds in a month. For each Priority Customer order submitted into the PRIME Auction as a PRIME Agency Order, MIAX shall credit each member at the separate per contract rate for PRIME Agency Orders; however, no rebates will be paid if the PRIME Agency Order executes against a Contra-side Order which is also a Priority Customer. The volume thresholds are calculated based on the customer average daily volume over the course of the month. Volume is recorded for and credits are delivered to the Member Firm that submits the order to the

<sup>3</sup> See Securities Exchange Act Release Nos. 73328 (October 9, 2014), 79 FR 62230 (October 16, 2014) (SR-MIAX-2014-50); 72567 (July 8, 2014), 79 FR 40818 (July 14, 2014) (SR-MIAX-2014-34); 72356 (June 10, 2014), 79 FR 34384 (June 16, 2014) (SR-MIAX-2014-26); 71698 (March 12, 2014), 79 FR 15185 (March 18, 2014) (SR-MIAX-2014-12); 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR-MIAX-2014-13); 71283 (January 10, 2014), 79 FR 2914 (January 16, 2014) (SR-MIAX-2013-63); 71009 (December 6, 2013), 78 FR 75629 (December 12, 2013) (SR-MIAX-2013-56).

<sup>4</sup> The term “MIAX Select Symbols” currently means options overlying AA, AAL, AAPL, AIG, AMZN, AZN, BABA, BP, C, CBS, CLF, CMCSA, EBAY, EEM, EFA, EWJ, FB, FCX, FXI, GE, GILD, GLD, GM, GOOG, GOOGL, HTZ, INTC, IWM, IYR, JCP, JPM, KO, MO, MRK, NFLX, NOK, NQ, PBR, PCLN, PFE, PG, QCOM, QQQ, S, SIRI, SPY, SUNE, T, TSLA, USO, VALE, WAG, WFC, WMB, WY, XHB, XLE, XLF, XLP, XLU and XOM.

<sup>5</sup> The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). See MIAX Rule 100.

Exchange. The Exchange aggregates the contracts resulting from Priority Customer orders transmitted and executed electronically on the Exchange from affiliated Members for purposes of the thresholds above, provided there is at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A. In the event of a MIAX System outage or other interruption of electronic trading on MIAX, the Exchange adjusts the national customer volume in multiply-listed options for the duration of the outage. A Member may request to receive its credit under the Program as a separate direct payment.

The Exchange proposes modifying the Program to amend the option classes that qualify for a per contract credit for transactions in MIAX Select Symbols. MIAX Select Symbols currently include options overlying AA, AAL, AAPL, AIG, AMZN, AZN, BABA, BP, C, CBS, CLF, CMCSA, EBAY, EEM, EFA, EWJ, FB, FCX, FXI, GE, GILD, GLD, GM, GOOG, GOOGL, HTZ, INTC, IWM, IYR, JCP, JPM, KO, MO, MRK, NFLX, NOK, NQ, PBR, PCLN, PFE, PG, QCOM, QQQ, S, SIRI, SPY, SUNE, T, TSLA, USO, VALE, WAG, WFC, WMB, WY, XHB, XLE, XLF, XLP, XLU and XOM. The Exchange proposes to modify the MIAX Select Symbols to add AMAT, AMD, BA, BBRY, BIDU, CAT, CELG, CVX, DAL, GPRO, HAL, JNJ, KMI, ORCL, RIG, VXX, X, XOP, and YHOO. The Exchange also proposes to modify the MIAX Select Symbols to remove AZN, CMCSA, EFA, EWJ, FXI, GOOG, IYR, PCLN, SIRI, and XLU. Thus, the Exchange will credit each Member the per contract rate set forth in the table located in the Fee Schedule resulting from each Priority Customer order transmitted by that Member executed on Exchange in AA, AAL, AAPL, AIG, AMAT, AMD, AMZN, BA, BABA, BBRY, BIDU, BP, C, CAT, CBS, CELG, CLF, CVX, DAL, EBAY, EEM, FB, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, HTZ, INTC, IWM, JCP, JNJ, JPM, KMI, KO, MO, MRK, NFLX, NOK, NQ, ORCL, PBR, PFE, PG, QCOM, QQQ, RIG, S, SPY, SUNE, T, TSLA, USO, VALE, VXX, WAG, WFC, WMB, WY, X, XHB, XLE, XLF, XLP, XOM, XOP, and YHOO. The per contract credit would be in lieu of the applicable credit that would otherwise apply to the transaction based on the volume thresholds. The Exchange notes that all the other aspects of the Program would continue to apply to the credits (e.g., the aggregation of volume of affiliates, exclusion of contracts that are routed to away

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

exchanges, exclusion of mini-options . . . etc.).<sup>6</sup>

For example, if Member Firm ABC, Inc. (“ABC”) has enough Priority Customer contracts to achieve 0.5% of the national customer volume in multiply-listed option contracts during the month of October, ABC will receive a credit of \$0.15 for each Priority Customer contract executed in the month of October. However, any qualifying Priority Customer transactions during such month that occurred in AA, AAL, AAPL, AIG, AMAT, AMD, AMZN, BA, BABA, BBRY, BIDU, BP, C, CAT, CBS, CELG, CLF, CVX, DAL, EBAY, EEM, FB, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, HTZ, INTC, IWM, JCP, JNJ, JPM, KMI, KO, MO, MRK, NFLX, NOK, NQ, ORCL, PBR, PFE, PG, QCOM, QQQ, RIG, S, SPY, SUNE, T, TSLA, USO, VALE, VXX, WAG, WFC, WMB, WY, X, XHB, XLE, XLF, XLP, XOM, XOP, and YHOO would be credited at the \$0.20 per contact rate versus the standard credit of \$0.15. Similarly, if Member Firm XYZ, Inc. (“XYZ”) has enough Priority Customer contracts to achieve 2.5% of the national customer volume in multiply-listed option contracts during the month of October, XYZ will receive a credit of \$0.18 for each Priority Customer contract executed in the month of October. However, any qualifying Priority Customer transactions during such month that occurred in AA, AAL, AAPL, AIG, AMAT, AMD, AMZN, BA, BABA, BBRY, BIDU, BP, C, CAT, CBS, CELG, CLF, CVX, DAL, EBAY, EEM, FB, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, HTZ, INTC, IWM, JCP, JNJ, JPM, KMI, KO, MO, MRK, NFLX, NOK, NQ, ORCL, PBR, PFE, PG, QCOM, QQQ, RIG, S, SPY, SUNE, T, TSLA, USO, VALE, VXX, WAG, WFC, WMB, WY, X, XHB, XLE, XLF, XLP, XOM, XOP, and YHOO would be credited at the \$0.20 per contact rate versus the standard credit of \$0.18.

The purpose of the amendment to the Program is to further encourage Members to direct greater Priority Customer trade volume to the Exchange in these high volume symbols. Increased Priority Customer volume will provide

<sup>6</sup> See MIAX Options Fee Schedule, p. 3. See also Securities Exchange Act Release Nos. 72798 (August 8, 2014), 79 FR 47695 (August 14, 2014) (SR-MIAX-2014-41); 72567 (July 8, 2014), 79 FR 40818 (July 14, 2014) (SR-MIAX-2014-34); 72356 (June 10, 2014), 79 FR 34384 (June 16, 2014) (SR-MIAX-2014-26); 71698 (March 12, 2014), 79 FR 15185 (March 18, 2014) (SR-MIAX-2014-12); 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR-MIAX-2014-13); 71283 (January 10, 2014), 79 FR 2914 (January 16, 2014) (SR-MIAX-2013-63); 71009 (December 6, 2013), 78 FR 75629 (December 12, 2013) (SR-MIAX-2013-56).

for greater liquidity, which benefits all market participants on the Exchange. The practice of incentivizing increased retail customer order flow in order to attract professional liquidity providers (Market-Makers) is, and has been, commonly practiced in the options markets. As such, marketing fee programs,<sup>7</sup> and customer posting incentive programs,<sup>8</sup> are based on attracting public customer order flow. The practice of providing additional incentives to increase order flow in high volume symbols is, and has been, commonly practiced in the options markets.<sup>9</sup> The Program similarly intends to attract Priority Customer order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market participants in these select symbols. Increasing the number of orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall.

The credits paid out as part of the program will be drawn from the general revenues of the Exchange.<sup>10</sup> The Exchange calculates volume thresholds on a monthly basis.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>12</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposal to modify the Program to expand the number of option classes that qualify for the credit for transactions in MIAX Select Symbols is fair, equitable and not unreasonably discriminatory. The credit for

<sup>7</sup> See MIAX Fee Schedule, Section 1(b).

<sup>8</sup> See NYSE Arca, Inc. Fees Schedule, page 4 (section titled “Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues”).

<sup>9</sup> See International Securities Exchange, LLC, Schedule of Fees, p. 6 (providing reduced fee rates for order flow in Select Symbols); NASDAQ OMX PHLX, Pricing Schedule, Section I (providing a rebate for adding liquidity in SPY); NYSE Arca, Inc. Fees Schedule, page 4 (section titled “Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues”).

<sup>10</sup> Despite providing credits under the Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization while the Program will be in effect.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

transactions in the select symbols is reasonably designed because it will incent providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The Program which provides increased incentives in high volume select symbols is also reasonably designed to increase the competitiveness of the Exchange with other options exchanges that also offer increased incentives to higher volume symbols. The proposed changes to the rebate Program are fair and equitable and not unreasonably discriminatory because it will apply equally to all Priority Customer orders in the select symbols. All similarly situated Priority Customer orders in the select symbols are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the Program is equitable and not unfairly discriminatory because, while only Priority Customer order flow qualifies for the Program, an increase in Priority Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads.

## B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting Members to direct their Priority Customer orders in the select symbols to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded here in those symbols. To the extent that there is additional competitive burden on non-Priority Customers or trading in non-select symbols, the Exchange believes that this is appropriate because the proposed changes to the rebate program should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here in those symbols. To the extent that this purpose is achieved, all the Exchange’s market participants should benefit from the improved market liquidity in such select symbols. Enhanced market



quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange in such select symbols. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it reduces the Exchange's fees in a manner that encourages market participants to direct their customer order flow, to provide liquidity, and to attract additional transaction volume to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a volume based customer rebate program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX, which is competing for volume with much larger exchanges that dominate the options trading industry. MIAX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the customer rebate program could cause any competitive harm to the options market or to market participants. Rather, the customer rebate program is a modest attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy. The Exchange notes that if the rebate program resulted in a modest percentage increase in the average daily trading volume in options executing on MIAX, while such percentage would represent a large volume increase for MIAX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the proposal will help further competition, because market participants will have yet another additional option in determining where to execute orders and post liquidity if they factor the benefits of a customer rebate program into the determination.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>13</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2015-08 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR-MIAX-2015-08. 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.,

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2015-08 and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74296; File No. SR-EDGX-2015-10]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 8.15 Entitled "Imposition of Fines for Minor Violation(s) of Rules"

February 18, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 5, 2015, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 8.15 entitled "Imposition of

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

Fines for Minor Violation(s) of Rules.” The text of the proposed rule change is available at the Exchange’s Web site at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

## II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend Rule 8.15 in order to make it substantively identical to the corresponding rules on BATS Exchange, Inc. (“BATS”) and BATS Y-Exchange, Inc. (“BYX”), as further described below. Last year, the Exchange and its affiliate EDGA Exchange, Inc. (“EDGA”) received approval to effect a merger (the “Merger”) of the Exchange’s parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BATS and BYX (together with BATS, BYX, EDGA and EDGX, the “BGM Affiliated Exchanges”).<sup>5</sup> In the context of the Merger, the BGM Affiliated Exchanges are working to align certain rules, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to amend Rule 8.15 in order to make it substantively identical to corresponding rules on BATS, BYX, and EDGA.<sup>6</sup>

Currently, paragraph (d) of Interpretation and Policy to Rule 8.15 includes Rule 2.5 Interpretation .04: Firm Element of Continuing Education Requirement (the “CE Rule”) under the list of Exchange rule violations and recommended fine schedule pursuant to Rule 8.15 related to the imposition of fines for minor violations of rules (the

“MRVP”). The Exchange, however, has no specific reference to the firm element of the continuing education requirements under the CE Rule. Further, BATS and BYX are proposing to adopt rules that are substantively identical to the Exchange’s MRVP, except that BATS and BYX are not proposing to add a provision covering the CE Rule.<sup>7</sup> As such, the Exchange is proposing to eliminate paragraph (d) of Interpretation and Policy .01 to Rule 8.15.

The Exchange is also proposing to amend Rule 8.15(a). Currently, Rule 8.15(a) provides that, for the purposes of imposing fines pursuant to Interpretation .02 of Rule 4.2, the Exchange may aggregate individual violations of particular rules and treat such violations as a single offense, provided that such aggregation is based upon a comprehensive automated surveillance program. The Exchange has never aggregated violations under this provision and does not anticipate doing so in the future due to the content of Interpretation .02 of Rule 4.2, which could not, because of its nature, be based on a comprehensive automated surveillance program. Interpretation and Policy .02 of Rule 4.2 is related to the requirement to furnish Exchange-related order, market and transaction data. As the Exchange does not currently require Members to provide such information and because compliance with a requirement to provide data would not likely be reviewed based on an automated surveillance (though surveillance would likely be performed on such data), the Exchange believes the reference to this provision in Rule 8.15 is no longer necessary. Based on the foregoing, and in order to conform rules across each of the BGM Affiliated Exchanges, the Exchange is proposing to remove this provision from Rule 8.15(a).

Finally, the Exchange is proposing to make several non-substantive changes to Rule 8.15. Specifically, in coordination with the elimination of paragraph (d) of Interpretation and Policy .01 to Rule 8.15, the Exchange is proposing to make several corresponding and non-substantive changes to the numbering of the rule. The Exchange is also proposing to add a period to each of the sentences in proposed paragraphs (f) and (g) of Interpretation and Policy .01 to Rule 8.15.

<sup>7</sup> The Exchange notes that BATS and BYX do not currently and are not going to propose to include a provision to cover the CE Rule currently included in the Exchange’s MRVP.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in that it is designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. Specifically, the Exchange believes that the proposed changes to Rule 8.15(a) and the deletion of paragraph (d) of Interpretation and Policy .01 to Rule 8.15 contribute to the protection of investors and the public interest by removing unnecessary language from Exchange Rules and correcting certain cross-references therein. The Exchange believes that these changes will help to make Exchange Rules clearer and avoid confusion for all participants on the Exchange.

Further, as mentioned above, the proposed rule changes, combined with the planned filings for BATS, BYX, and EDGA,<sup>10</sup> would allow the BGM Affiliated Exchanges to provide a consistent set of rules as it relates to the imposition of fines for minor violations of rules across each of the exchanges. Consistent rules, in turn, will simplify the application of the Exchange’s regulatory program for Members of the Exchange that are also participants on BATS, BYX, and/or EDGA. The proposed rule change would provide greater harmonization between rules of similar purpose on the BGM Affiliated Exchanges, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

Finally, the Exchange believes that the non-substantive changes described above will contribute to the protection of investors and the public interest by helping to avoid confusion with respect to Exchange rules by creating a consistent numbering system in its Rules.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

<sup>5</sup> See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-43; SR-EDGA-2013-34).

<sup>6</sup> The Exchange understands that BATS, BYX, and EDGA intend to file proposed rule changes with the Commission to adopt substantively identical rules.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See supra notes 6 and 7.

any burden on competition not necessary or appropriate in furtherance of the purposes of the act. To the contrary, allowing the Exchange to implement substantively identical rules related to the imposition of fines for minor violations of rules across each of the BGM Affiliated Exchanges does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BATS, BYX, and EDGA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members of the BGM Affiliated Exchanges and an enhanced ability of the BGM Affiliated Exchanges to fairly and efficiently regulate members, which will further enhance competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph of Rule 19b-4(f)(6) thereunder.<sup>12</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement is consistent with the protection of investors and the public interest because it will allow the Exchange to have consistent rules related to minor violations across each of the BGM Affiliated Exchanges, which it believes will both more consistently and effectively regulate members of the BGM Affiliated Exchanges as well as reduce the regulatory burden on Members of the Exchange that are also members of EDGA, BYX and/or BZX. The Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission

designates the proposed rule change to be operative upon filing.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-EDGX-2015-10 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File No. SR-EDGX-2015-10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-EDGX-2015-10 and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2015-03667 Filed 2-23-15; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-74291; File No. SR-MIAX-2015-09]

**Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule**

February 18, 2015.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 5, 2015, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4.

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 amend the MIAX Select Symbols<sup>3</sup> section of the Priority Customer Rebate Program (the "Program")<sup>4</sup> to replace the option class "WAG" with "WBA".

Walgreens recently completed a corporate transaction that resulted in Walgreens becoming a wholly owned subsidiary of Walgreens Boots Alliance, Inc., and shares of Walgreens common stock being converted into shares of Walgreens Boots Alliance common stock on a one-for-one basis. In addition, the new shares of Walgreens Boots Alliance were given a new symbol "WBA". The Exchange now proposes to amend the Fee Schedule to change the symbol in the MIAX Select Symbols from "WAG" to "WBA" to correspond with this change. The change is designed to ensure that there is no confusion amongst market participants that Walgreens will continue to remain in the MIAX Select Symbols. Walgreens completed its corporate transaction on December 30, 2014, with the new symbol commencing trading on December 31, 2014.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4)

of the Act<sup>6</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

In particular, the proposal to change the Walgreens symbol to its new designation is consistent with the Act because the proposed change is merely updating the corresponding symbol to allow for Walgreens to continue to remain in the MIAX Select Symbols. The proposed change will allow for continued benefit to investors by providing them an updated reference to a symbol in the Fee Schedule.

The Exchange believes that the proposal to modify the Program to amend an option class that qualifies for the credit for transactions in MIAX Select Symbols is fair, equitable and not unreasonably discriminatory. The credit for transactions in the select symbols is reasonably designed because it will incent providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The Program which provides increased incentives in high volume select symbols is also reasonably designed to increase the competitiveness of the Exchange with other options exchanges that also offer increased incentives to higher volume symbols. The proposed change to the rebate Program is fair and equitable and not unreasonably discriminatory because it will apply equally to all Priority Customer orders in the select symbols. All similarly situated Priority Customer orders in the select symbols are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the Program is equitable and not unfairly discriminatory because, while only Priority Customer order flow qualifies for the Program, an increase in Priority Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is a not a competitive filing but rather is designed

to update the new underlying symbol for Walgreens in order to avoid potential confusion on the part of market participants.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>7</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2015-09 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR-MIAX-2015-09. 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

<sup>3</sup> The term "MIAX Select Symbols" currently means options overlying AA, AAL, AAPL, AIG, AMAT, AMD, AMZN, BA, BABA, BBRY, BIDU, BP, C, CAT, CBS, CELG, CLF, CVX, DAL, EBAY, EEM, FB, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, HTZ, INTC, IWM, JCP, JNJ, JPM, KMI, KO, MO, MRK, NFLX, NOK, NQ, ORCL, PBR, PFE, PG, QCOM, QQQ, RIG, S, SPY, SUNE, T, TSLA, USO, VALE, VXX, WAG, WFC, WMB, WY, X, XHB, XLE, XLF, XLP, XOM, XOP, and YHOO.

<sup>4</sup> See Securities Exchange Act Release Nos. 73328 (October 9, 2014), 79 FR 62230 (October 16, 2014) (SR-MIAX-2014-50); 72567 (July 8, 2014), 79 FR 40818 (July 14, 2014) (SR-MIAX-2014-34); 72356 (June 10, 2014), 79 FR 34384 (June 16, 2014) (SR-MIAX-2014-26); 71698 (March 12, 2014), 79 FR 15185 (March 18, 2014) (SR-MIAX-2014-12); 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR-MIAX-2014-13); 71283 (January 10, 2014), 79 FR 2914 (January 16, 2014) (SR-MIAX-2013-63); 71009 (December 6, 2013), 78 FR 75629 (December 12, 2013) (SR-MIAX-2013-56).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2015-09 and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015-03665 Filed 2-23-15; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74286; File No. SR-ISE-2015-04]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

February 18, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 3, 2015, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend the Schedule of Fees to eliminate fees and rebates for Mini Options, which were delisted on the Exchange as of the close of business on December 17, 2014. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange is permitted to list Mini Option contracts overlying ten shares of the following five symbols: SPY, AAPL, GLD, GOOGL, and AMZN, pursuant to Supplementary Material .13 to Rule 504. Due to the smaller exercise and assignment value of Mini Options contracts, the Exchange charges fees and provides rebates in these Mini Option classes at a rate that is 1/10th the rate of fees and rebates the Exchange provides for trading in Standard Options. As the Exchange has delisted all Mini Options as of the close of business on December 17, 2014, the Exchange now proposes to eliminate fees and rebates for Mini Options in the Schedule of Fees. In particular, the Exchange also proposes to remove language related to Mini Options in the following sections of the Schedule of Fees:

1. Sections III and IV, which contain tables on Regular Order Fees and Rebates for Mini Options and Complex Order Fees and Rebates for Mini Options, respectively. These sections will be eliminated in their entirety.<sup>3</sup>

<sup>3</sup> The Exchange proposes to update section references to take into account the new section numbers when these two sections are removed.

2. The definition of Mini Options in the Preface.

3. Language related to combining volume in Standard Options and Mini Options to calculate Priority Customer ADV and Priority Customer Complex ADV in the footnotes to Sections I and II.

4. QCC and Solicitation Rebate for Mini Options in Section VI, A, including language related to combining volume in Standard Options and Mini Options to determine applicable volume tiers.

5. ISE Market Maker Discount Tiers for Mini Options in Section VI, C, including language related to combining volume in Standard Options and Mini Options to determine applicable volume tiers.

6. Payment for Order Flow fees for Mini Options in Non-Penny Pilot Symbols in Section VI, D.

7. Route-out fees for Mini Options in Section VI, F.

8. The Credit for Responses to Flash Orders in Mini Options in Section VI, G.

9. The service fee for Crossing Orders in Mini Options in Section VI, H.

10. Language related to charging the Options Regulatory Fee for options transactions in Mini Options in Section IX, C.

In connection with the above changes, the Exchange further proposes to remove related references to Standard Options, as the distinction between Standard Options and Mini Options is no longer necessary with the delisting of Mini Options.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and Section 6(b)(4) of the Act,<sup>5</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

Specifically, the Exchange believes that the proposed rule change is reasonable, equitable, and not unfairly discriminatory as all Mini Option classes have been delisted on the Exchange as of the close of business on December 17, 2014. The Exchange believes that eliminating fees and rebates for Mini Options (and removing superfluous references to Standard Options) will simplify the Schedule of Fees and reduce investor confusion as to what products trade on the Exchange.

Section references in this proposed rule change are to the current section numbers.

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

The Exchange represents that in the event it determines to relist Mini Options in the future it will first submit a proposed rule change to adopt fees and rebates applicable to Mini Options.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>6</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended solely to eliminate investor confusion as to the products that trade on the Exchange. As such, the Exchange believes the proposed rule change will have no competitive impact.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>8</sup> because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2015-04 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-ISE-2015-04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2015-04 and should be submitted on or before March 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-03657 Filed 2-23-15; 8:45 am]

**BILLING CODE 8011-01-P**

### **SMALL BUSINESS ADMINISTRATION**

#### **Interagency Task Force on Veterans Small Business Development; Federal Register Meeting Notice**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of open Federal Interagency Task Force meeting.

**DATE AND TIME:** March 12, 2015, from 9:00 a.m. to 12:00 noon.

**ADDRESSES:** SBA Headquarters, 409 3rd Street SW., Washington, DC 20416, in the Eisenhower Conference Room B, Concourse Level.

*Purpose:* This public meeting is to discuss recommendations identified by the Interagency Task Force (IATF) to further enable veteran entrepreneurship policy and programs. In addition, the Task Force will allow public comment regarding the focus areas.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development. The Task Force is established pursuant to Executive Order 13540 and focused on coordinating the efforts of Federal agencies to improve capital, business development opportunities and pre-established Federal contracting goals for small business concerns owned and controlled by veterans (VOB's) and service-disabled veterans (SDVOSB's). Moreover, the Task Force shall coordinate administrative and regulatory activities and develop proposals relating to "six focus areas": (1) Access to capital (loans, surety bonding and franchising); (2) Ensure achievement of pre-established contracting goals, including mentor protégé and matching with contracting opportunities; (3) Increase the integrity of certifications of status as a small business; (4) Reducing paperwork and administrative burdens in accessing business development and entrepreneurship opportunities; (5) Increasing and improving training and counseling services; and, (6) Making other improvements to support veteran business development by the Federal government. On November 1, 2011, the Interagency Task Force on Veterans Small Business Development submitted its first report to the President, which included 18 recommendations that were applicable to the "six focus areas" identified above.

Advance notice of attendance or desire to make a presentation to the Task Force is requested. Comments for

<sup>6</sup> 15 U.S.C. 78f(b)(8).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

the record should be emailed to point of contact listed below prior to the meeting for inclusion in the public record.

Verbal presentations will be limited to five minutes in order to meet the agenda objectives. Requests for attendance/briefing must be emailed or sent via post by March 4, 2015, to Ms. Barbara Carson, Acting Associate Administrator, Office of Veterans Business Development, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416; phone: (202) 205-6773; email: [vettaskforce@sba.gov](mailto:vettaskforce@sba.gov). Public comments, requests for additional information and/or special accommodations should be directed to same contact above. For more information, please visit our Web site at [www.sba.gov/vets](http://www.sba.gov/vets).

Dated: February 6, 2015.

**Diana Doukas,**

*SBA Committee Management Officer.*

[FR Doc. 2015-03514 Filed 2-23-15; 8:45 am]

BILLING CODE 8025-01-P

## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2014-0039]

### Privacy Act of 1974, as Amended; Computer Matching Program (SSA/ Office of Child Support Enforcement (OCSE))—Match Number 1306

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of a renewal of an existing computer matching program that will expire on March 31, 2015.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with OCSE.

**DATES:** We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefaxing to (410) 966-0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401. All comments received

will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

#### SUPPLEMENTARY INFORMATION:

##### A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L.) 100-503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

##### B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs

comply with the requirements of the Privacy Act, as amended.

**Kirsten J. Moncada,**

*Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.*

### Notice of Computer Matching Program, SSA With the Office of Child Support Enforcement (OCSE)

#### A. Participating Agencies

SSA and OCSE

#### B. Purpose of the Matching Program

The purpose of this matching program is to govern a matching program between OCSE and us. The agreement covers information exchange operations between OCSE and us that will provide us with quarterly wage and unemployment insurance information located in the National Directory of New Hires (NDNH) to allow us to determine eligibility of applicants for Extra Help (low-income subsidy assistance) under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173) (Extra Help). The agreement also governs the use, treatment, and safeguarding of the information exchanged. This agreement assists us in (1) determining eligibility of applicants for Extra Help; (2) redetermining eligibility of existing Extra Help beneficiaries during periodic screening; and (3) administering the Extra Help program.

#### C. Authority for Conducting the Matching Program

The legal authority for disclosures under this agreement are the Social Security Act (Act) and the Privacy Act of 1974, as amended. Subsection 453(j)(4) of Act provides that OCSE shall provide the Commissioner with all information in the NDNH. 42 U.S.C. 653(j)(4). We have authority to use data to determine entitlement to and eligibility for programs we administer pursuant to 1631(f) and 1860D-14(a)(3) of the Act. 42 U.S.C. 1283(f) and 1395w-114(a)(3)(B). Disclosures under this agreement shall be made in accordance with 5 U.S.C. 552a(b)(3), and in compliance with the matching procedures in 5 U.S.C. 552a(o), (p), and (r).

Section 1860D-14(a)(3)(B) of the Act provides that "[t]he determination of whether a Part D eligible individual residing in a state is a subsidy eligible individual shall be determined under the state plan under title XIX for the state under 1935(a) or by the Commissioner." 42 U.S.C. 1395w-114(a)(3)(B).

We have independent authority to collect this information regarding

Medicare Parts A–D via 202–205, 223, 226, 228, 1611, 1631, 1818, 1839, 1850, and 1860D–1–1860D–15 of the Act. (42 U.S.C. 402–405, 423, 426, 428, 1382, 1383, 1395i–2, 1395o, 1395r, 1395s, and 1395w–101–1395w–115).

*D. Categories of Records and Persons Covered by the Matching Program*

We will provide OCSE with the following data elements electronically in the finder file: COSSN and name. OCSE will provide electronically to us the following data elements from the NDNH quarterly wage file: Quarterly wage record identifier; for employees: Name, SSN, processed date, wage amount, and reporting period; for employers of individuals: Name, employer identification number, employer Federal Information Processing Standards (FIPS) code (if present), and address(es). OCSE will provide electronically to us the following data elements from the NDNH unemployment insurance file: Unemployment insurance record identifier, processed date, SSN, name, address, unemployment insurance benefit amount, reporting period, and transmitter state name.

*E. Inclusive Dates of the Matching Program*

The effective date of this matching program is April 1, 2015; provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and, if both agencies meet certain conditions, it may extend for an additional 12 months thereafter.

[FR Doc. 2015–03699 Filed 2–23–15; 8:45 am]

**BILLING CODE 4191–02–P**

**DEPARTMENT OF STATE**

[Public Notice 9044]

**Waiver of Chemical and Biological Weapons (CBW) Proliferation Sanctions Against Certain Chinese Entities**

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** A determination has been made, pursuant to Section 81(e) of the Arms Export Control Act and Section 11C(e) of the Export Administration Act of 1979, as amended, to waive nonproliferation sanctions imposed under these Acts on certain Chinese entities.

**DATES:** *Effective Date:* Upon publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Pamela K. Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State, Telephone (202) 647–4930.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 81(e) of the Arms Export Control Act (22 U.S.C. 2798(e)) and Section 11C(e) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2410c(e)), the Under Secretary of State for Arms Control and International Security determined and certified to Congress that waiving sanctions originally imposed on May 21, 1997 (*see* Volume 62 FR Public Notice 28304) on the following Chinese entities and successors is important to the national security interests of the United States:

1. Nanjing Chemical Industries Group (NCI)
2. Jiangsu Yongli Chemical Engineering and Technology Import/Export Company

Dates: February 18, 2015.

**Thomas M. Countryman,**

*Assistant Secretary of State for International Security and Nonproliferation.*

[FR Doc. 2015–03757 Filed 2–23–15; 8:45 am]

**BILLING CODE 4710–27–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**FAA Approval of Noise Compatibility Program; Westover Metropolitan Airport, Chicopee, Massachusetts**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the Westover Metropolitan Development Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979. On September 25, 2014, the FAA determined the noise exposure maps submitted by the Westover Metropolitan Development Corporation under Part 150 were in compliance with applicable requirements. On February 6, 2015 the New England Region Airports Division Manager approved the Noise Compatibility Program.

**DATES:** The effective date of the FAA's approval of the Westover Metropolitan Airport noise compatibility program is February 6, 2015.

**FOR FURTHER INFORMATION CONTACT:** Richard Doucette, Federal Aviation Administration, New England Region, Airports Division, ANE–600, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7613.

**SUPPLEMENTARY INFORMATION:**

**Authority:** 49 U.S.C. 47501–47510; 14 CFR part 150.

This notice announces that the FAA has given its overall approval to Westover Metropolitan Airport noise compatibility program, effective February 6, 2015.

Under Section 104 (a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps.

The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR), Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

(b) program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

(c) program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

(d) program measures relating to the use of flight procedures can be implemented within the period covered



by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The Westover Metropolitan Development Corporation submitted to the FAA, on September 25, 2014, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from 2013 to 2014. The Westover Metropolitan Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on September 25, 2014. Notice of this determination was published in the **Federal Register** on February 6, 2013.

The Westover Metropolitan Airport study contains a proposed noise compatibility program comprised of actions designed for implementation by airport. The Westover Metropolitan Development Corporation requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on September 25, 2014, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained a change to one noise mitigation measure in the Noise Compatibility Program.

This change allows for voluntary acquisition of residential properties located in the 65DNL noise contour. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The New England Region Airports Division Manager therefore approved the overall program on February 6, 2015. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Westover Metropolitan Airport.

Issued in Burlington, Massachusetts on February 6, 2015.

**Mary T. Walsh,**

*Manager, Airports Division, FAA New England Region.*

[FR Doc. 2015-03777 Filed 2-23-15; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Permanent Closure of Diego Jimenez Torres Airport, Fajardo, Puerto Rico

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

**ACTION:** Notice of permanent closure of Diego Jimenez Torres Airport (X95).

**SUMMARY:** The Federal Aviation Administration (FAA) received written notice, dated January 21, 2015, from Puerto Rico Ports Authority (PRPA) advising that on April 30, 2015, it will permanently close Diego Jimenez Torres Airport (X95), Fajardo, Puerto Rico; the notice was in excess of 30 days before the closure in accordance with 49 U.S.C. 46319(a). The FAA hereby publishes PRPA's notice of permanent closure Diego Jimenez Torres Airport in accordance with 49 U.S.C. 46319(b).

**DATES:** The permanent closure of the airport is effective as of April 30, 2015.

**FOR FURTHER INFORMATION CONTACT:** Parks Preston, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Campus Bldg., Suite 2-260, College Park, GA 30337, (404) 305-7149.

**SUPPLEMENTARY INFORMATION:** On January 21, 2015, PRPA, sponsor of Diego Jimenez Torres Airport (X95), informed the FAA that the Airport will close permanently on April 30, 2015. (See enclosed letter) X95 is a small 94-acre non-towered, general aviation airport. The useful life of the federally funded improvements expired in 2013. FAA recognizes that PRPA is no longer contractually obligated to continue

operating this airport. Title 49 United States Code § 46319 requires a public agency (as defined in section 47102) may not permanently close an airport listed in the National Plan of Integrated Airport Systems under section 47103 without providing written notice to the Administrator of the FAA at least 30 days before the date of the closure. The FAA recognizes the letter dated January 21, 2015 from PRPA meets this requirement.

Issued in College Park, Georgia on February 11, 2015.

**Larry F. Clark,**

*Manager, Atlanta Airports District Office, Southern Region.*

[FR Doc. 2015-03776 Filed 2-23-15; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No.2015-05]

#### Petition for Exemption; Summary of Petition Received; Elevated Perspective Media

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

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. 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 March 16, 2015.

**ADDRESSES:** Send comments identified by docket number FAA-2014-0930 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations 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.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations 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:** For technical questions concerning this action, contact Nia Daniels, 800 Independence Avenue SW., Washington, DC 20591. (202) 267-9677

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 18, 2015

**Lirio Liu,**

*Director, Office of Rulemaking.*

#### **Petition for Exemption**

*Docket No.:* FAA-2014-0930.

*Petitioner:* Elevated Perspective Media.

*Section(s) of 14 CFR Affected:* part 21; 45.23(b); 61.3(a)(1)(i); 61.113 (a) and (b); 91.7(a); 91.9(b)(2); 91.103(b); 91.105; 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:* Elevated Perspective Media requests an exemption to commercially operate its Aeronics Sky Jib unmanned aircraft system for aerial cinematography in closed-set motion picture and television filming.

[FR Doc. 2015-03736 Filed 2-23-15; 8:45 am]

**BILLING CODE 4910-13-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

[Summary Notice No. 2015-04]

#### **Petition for Exemption; Summary of Petition Received; AIG PC Global Services, Inc.**

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

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. 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 March 16, 2015.

**ADDRESSES:** Send comments identified by docket number FAA-2014-0913 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations 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.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations 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:** For technical questions concerning this action, contact Nia Daniels, 800 Independence Avenue SW., Washington, DC 20591. (202) 267-9677

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 18, 2015.

**Lirio Liu,**

*Director, Office of Rulemaking.*

#### **Petition for Exemption**

*Docket No.:* FAA-2014-0913.

*Petitioner:* AIG PC Global Services, Inc.

*Section(s) of 14 CFR Affected:* part 21, Subpart H; part 27; §§ 45.23(b); 45.27(b); 61.113; 91.7(a); 91.9(b)(2) and (c); 91.103; 91.109(a); 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:* AIG PC Global Services, Inc. (AIG PCGS) seeks an exemption to use the DJI Phantom II Vision Plus, Precision Hawk Lancaster, Sensefly eBee, and 3D Robotics Iris Plus unmanned aircraft systems (1) to conduct research and development at test sites owned or controlled by AIG PCGS, (2) to conduct inspections of its corporate affiliates' policyholders' property after casualty events, and (3) to conduct risk assessment, loss control, and surety performance.

[FR Doc. 2015-03737 Filed 2-23-15; 8:45 am]

**BILLING CODE 4910-13-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Highway Administration**

[Docket No. FHWA-2015-0005]

#### **Agency Information Collection Activities: Notice of Request for Renewal of Two Previously Approved Information Collection**

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew two information collections, which are summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by April 27, 2015.

**ADDRESSES:** You may submit comments identified by Docket ID Number FHWA-2015-0005 by any of the following methods:

*Web site:* For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>

[www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments.

*Fax:* 1-202-493-2251.

*Mail:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

*Hand Delivery or Courier:* U.S.

Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

*Title 1:* A Guide to Reporting Highway Statistics.

*OMB Control Number:* 2125-0032.

*Abstract:* A Guide to Reporting Highway Statistics provides for the collection of information by describing policies and procedures for assembling highway related data from the existing files of State agencies. The data includes motor-vehicle registration and fees, motor-fuel use and taxation, driver licensing, and highway taxation and finance. Federal, State, and local governments use the data for transportation policy discussions and decisions. Motor-fuel data are used in attributing receipts to the Highway Trust Fund and subsequently in the apportionment formula that are used to distribute Federal-Aid Highway Funds. The data are published annually in the FHWA's Highway Statistics. Information from Highway Statistics is used in the joint FHWA and Federal Transit Administration required biennial report to Congress, Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance, which contrasts present status to future investment needs.

*Respondents:* State and local governments of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, and the Virgin Islands share this burden.

*Estimated Average Burden per Response:* The estimated average reporting burden per response for the annual collection and processing of the data is 754 hours for each of the States (including local governments), the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, and the Virgin Islands.

*Estimated Total Annual Burden:* The estimated total annual burden for all respondents is 42,206 hours.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Dougherty, (202) 366-9234,

Department of Transportation, Federal Highway Administration, Office of Policy, Office of Highway Policy Information, Highway Funding and Motor Fuels Division (HPPI-10), 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

*Title 2:* Highway Performance Monitoring System (HPMS).

*OMB Control Number:* 2125-0028.

*Abstract:* The HPMS data that is collected is used for management decisions that affect transportation, including estimates of the Nation's future highway needs and assessments of highway system performance. The information is used by the FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems. This data is essential to the FHWA and Congress in evaluating the effectiveness of the Federal-aid highway program. The HPMS also provides miles, lane-miles and travel components of the Federal-Aid Highway Fund apportionment formulae. The data that is required by the HPMS is continually reassessed and streamlined by the FHWA.

*Respondents:* State governments of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico.

*Estimated Average Burden per Response:* The estimated average burden per response for the annual collection and processing of the HPMS data is 1,440 hours for each State, the District of Columbia and the Commonwealth of Puerto Rico.

*Estimated Total Annual Burden:* The estimated total annual burden for all respondents is 74,880 hours.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Rozycki, (202) 366-5059, Department of Transportation, Federal Highway Administration, Highway Systems Performance (HPPI-20), Office of Highway Policy Information, Office of Policy & Governmental Affairs, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

#### Public Comments Invited

You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including

use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of these information collections.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Ch. 35, as amended; and 49 CFR 1.48.

Issued On: February 18, 2015.

**Michael Howell,**

*Information Collection Officer.*

[FR Doc. 2015-03710 Filed 2-23-15; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2015-0007]

#### Notice of Buy America Waiver

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of Buy America Waivers.

**SUMMARY:** This notice provides NHTSA's finding with respect to three requests from the North Carolina Department of Transportation, Governor's Highway Safety Program (NCGHSP) to waive the Buy America requirement. NHTSA finds that a non-availability waiver of the Buy America requirement is inappropriate for the purchase of seven different models of child safety seats because there are comparable products produced in the United States. In addition, NHTSA finds that a non-availability waiver is appropriate for NCGHSP to purchase e-citation printers, and HP printer cartridges and imaging drums because there are no comparable products produced domestically.

**DATES:** The effective date of this waiver is March 2, 2015. Written comments regarding this notice may be submitted to NHTSA and must be received on or before: March 11, 2015.

**ADDRESSES:** Written comments may be submitted using any one of the following methods:

- *Mail:* Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Fax:* Written comments may be faxed to (202) 493-2251.

- *Internet:* To submit comments electronically, go to the Federal regulations Web site at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

• *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

*Instructions:* All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You may also call the Docket at 202-366-9324.

**FOR FURTHER INFORMATION CONTACT:**

For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202-366-0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202-366-5263). You may send mail to these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

This notice provides NHTSA's finding that a waiver of the Buy America requirements, 23 U.S.C. 313, is not appropriate for NCGHSP to purchase seven different models of child safety seats using grant funds authorized under 23 U.S.C. 402. This notice also provides NHTSA's finding that a non-availability waiver is appropriate for the purchase of e-citation printers, and HP printer cartridges and imaging drums using grant funds authorized under sections 23 U.S.C. 405(c) and 402, respectively.

Section 402 funds are available for use by State Highway Safety Programs that, among other things, encourage the proper use of occupant protection devices, including child restraint systems. 23 U.S.C. 402(a). Section 405(c) funds are available for use by State highway safety programs to support the development and implementation of effective State programs that, among other things, improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of State traffic safety data. 23 U.S.C. 405(c)(1).

Buy America provides that NHTSA "shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States." 23 U.S.C. 313. However, NHTSA may waive those requirements if (1) their application would be inconsistent with the public interest; (2) such materials and products are not

produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent. 23 U.S.C. 313(b).

NCGHSP seeks waivers to use Federal highway safety grant funds to purchase (1) seven different models of child safety seats for use in its Child Passenger Safety Program;<sup>1</sup> (2) e-citation printers for use by local police officers; and (3) Hewlett-Packard(HP) 130A LaserJet Toner Cartridges and HP 126A LaserJet Imaging Drum CE314A for existing printers used by occupant protection program staff in their daily activities. In this notice, we first address the child safety seats, then the e-citation printers, and lastly the HP cartridges and imaging drums.

NCGHSP seeks a waiver to use Federal highway safety grant funds to purchase various models of foreign made car seats in its Child Passenger Safety (CPS) program to train prospective and new technicians. NCGHSP states that it is unable to identify any comparable domestic made car seats to use in its CPS certification and renewal training classes. However, NHTSA conducted an assessment and identified comparable American manufactured car seats that could be used to fulfill the purpose of NCGHSP's CPS certification and renewal training classes. Consequently, as explained below, NHTSA has determined that a waiver to purchase these foreign made car seats is inappropriate.

NCGHSP states the purpose of the CPS certification and renewal training classes is to offer CPS technicians and prospective technicians the opportunity for hands-on training of a wide variety of child safety seats and booster seats. Based on their request, NCGHSP seeks a Buy America waiver to purchase various foreign-made car seat models to perform car seat training for CPS technicians and prospective technicians. In general, the car seats that NCGHSP seeks to purchase are categorized into four classes of seats: (1) Rear-facing only seats, (2) convertible seats, (3) combination seats, and (4) booster seats. NHTSA found that both Britax and Dorel manufacture seats in all four requested classes in the United States. Based on this information, NCGHSP has not demonstrated that it meets the Buy America waiver requirements to purchase foreign-made

<sup>1</sup> NCGHSP requests to purchase the following models of child safety seats: Baby Trend Inertia, Chicco Keyfit 30, Cybex Aton Q, Graco HeadWise 70, Graco Nautilus, Graco Affix, and Evenflo Rightfit Booster.

child safety car seats to use in its CPS certification and renewal training classes.

NCGHSP states that each of the seven child seats has a feature that is not found on domestically produced car seats or the seat is popular with consumers. NHTSA recognizes that there are dozens of different car seat models in class of child restraints and that some domestic car seats may lack similar features available in the car seat models requested by North Carolina, but these features are marketing based features that have little overall impact on the functionality of the seats. Thus, even without the features of the car seats that NCGHSP seeks, the overall function of domestic made seats fulfill the purpose for the CPS certification and renewal training classes. The purpose of these classes is to provide the basic knowledge and technical skills of the correct use and installation of car restraints (*i.e.* rear facing, convertibles, forward facing), booster seats, and seat belts necessary to certify technicians to conduct safety inspection stations and provide basic community education. With such a large variety of car seats in the market, and with marketing features to distinguish a restraint from competitors, the CPS training classes must provide basic training that is common to all seats. A large number of domestically produced car seats are available for this purpose. Since comparable models of the requested classes of car seats are produced domestically, NCGHSP's Buy America waiver is denied. NHTSA invites public comment on this conclusion.

NCGHSP also seeks a waiver to purchase mobile printers to assist North Carolina law enforcement agencies in participating in North Carolina's state-wide e-citation program. North Carolina's e-citation program is an integrated state-wide system that permits data obtained from by an officer during a traffic stop to be available instantaneously in the state court system. Following state procurement procedures, NCGHSP opened a publicly advertised bid for two types of e-citation printers: (1) Inkjet printer and (2) thermal printer. None of the bids received offered a printer that was produced in the United States. The specifications NCGHSP requires for the inkjet printers are as follows: print resolution of 600 DPI Black and 4800 × 1200 DPI color; print speed of 22 ppm Black and 18 ppm color; compatible with Windows; Borderless printing (up to 4 x 6 in); USB 2.0 connectivity; and Bluetooth capability. The specifications that NCGHSP requires for thermal printers are as follows: Print resolution

of 300 DPI; print speed of 6 ppm; compatible with Windows; must be able to print 4" thermal roll paper and 8.5" sheet feed thermal paper; product weight of 1.1 lbs; USB 2.0 connectivity; and Bluetooth capability.

NHTSA conducted a market analysis that did not locate any comparable American manufactured e-citation printers that are compatible with North Carolina's state-wide e-citation program. NHTSA was able to identify the FieldPro Series, a direct thermal mobile printer manufactured in the United States by Printek, Inc.<sup>2</sup> However, it does not appear that the FieldPro Series meets the specifications required by North Carolina. The FieldPro Series printer is unable to print 8.5" sheet feed thermal paper; it prints at 2.8 ips and at a resolution of 203 dps. Since the FieldPro Series printer does not meet the specifications required by NCGHSP, NHTSA has determined that there are no comparable products manufactured domestically. Therefore, a Buy America waiver is appropriate since Printek's FieldPro Series does not meet the specification required by NCGHSP for its e-citation program. NHTSA invites public comment on this conclusion.

Lastly, NCGHSP seeks a waiver to purchase HP printer cartridges and imaging drums for existing HP printers. The State intends to use the printer cartridges and imaging drums in the Injury Prevention section of its Buckle Up Kids/Safe Kids NC program. The requested equipment will be used to print outreach and educational materials for the program. NCGHSP states that only HP cartridges and imaging drums should be used in the program's HP printers because equipment produced by other manufacturers may cause degradation or quality issues when used in place of HP products. It is unable to identify any printer cartridges and imaging drums for existing HP printers that meet the Buy America requirements. The State noted that HP is a large, multinational corporation with facilities, including manufacturing facilities, world-wide. NCGHSP is unable to identify the location of the facilities that produce the replacement HP printer cartridges and imaging drums. NHTSA conducted similar assessments and cannot confirm that HP printer cartridges and imaging drums are produced domestically and is not aware of any comparable printer cartridges and imaging drums produced in the United States. Therefore, the Buy America waiver is appropriate. NHTSA

invites public comment on this conclusion.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(2), NHTSA finds that it is appropriate to grant waivers from the Buy America requirements to NCGHSP in order for it to use Federal highway safety grant funds to purchase e-citation printers and HP printer cartridges and imaging drums. These waivers apply to North Carolina and all other States seeking to use section 405(c) funds to purchase e-citation printers meeting the specifications described above and section 402 funds for HP printer cartridges and imaging drums for the purposes mentioned herein. These waivers will continue through fiscal year 2015 and will allow the purchase of these items as required for North Carolina's Governor's Highway Safety Program. Accordingly, these waivers will expire at the conclusion of fiscal year 2015 (September 30, 2015). In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), NHTSA is providing this notice as its finding that a waiver of the Buy America requirement is appropriate.

NHTSA also determines that it is inappropriate to grant a waiver from the Buy America requirement for NCGHSP to use Federal highway safety grant funds to purchase various models of car seats in its Child Passenger Safety Program.

Written comments on these findings may be submitted through any of the methods discussed above. NHTSA may reconsider these findings, if through comment, it learns of additional relevant information regarding its decisions related to NCGHSP's waiver requests.

These findings should not be construed as an endorsement or approval of any products by NHTSA or the U.S. Department of Transportation. The United States Government does not endorse products or manufacturers.

**Authority:** 23 U.S.C. 313; Pub. L. 110-161.

Issued in Washington, DC under authority delegated in 49 CFR 1.95.

**O. Kevin Vincent,**  
Chief Counsel.

[FR Doc. 2015-03695 Filed 2-23-15; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2015-0005]

#### Notice of Buy America Waiver

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of Buy America waiver.

**SUMMARY:** This notice provides NHTSA's finding with respect to a request to waive the requirement of Buy America from the Traffic Safety Office (TSO) of the Ohio Department of Public Safety. NHTSA finds that a non-availability waiver of the Buy America requirement is appropriate for the purchase of printers using Federal highway traffic safety grant funds because there are no suitable products produced in the United States.

**DATES:** The effective date of this waiver is March 2, 2015. Written comments regarding this notice may be submitted to NHTSA and must be received on or before: March 11, 2015.

**ADDRESSES:** Written comments may be submitted using any one of the following methods:

- **Mail:** Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- **Fax:** Written comments may be faxed to (202) 493-2251.

- **Internet:** To submit comments electronically, go to the Federal regulations Web site at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

**Instructions:** All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You may also call the Docket at 202-366-9324.

**FOR FURTHER INFORMATION CONTACT:** For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202-366-0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202-366-5263). You may send mail to these officials at the National Highway Traffic

<sup>2</sup> See <http://www.printek.com/index.php/mobile/about>.

Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** This notice provides NHTSA's finding that a waiver of the Buy America requirement, 23 U.S.C. 313, is appropriate for Ohio's TSO to purchase printers using grant funds authorized under 23 U.S.C. 405(c) (section 405) and its predecessor, 23 U.S.C. 408.<sup>1</sup> Section 405(c) funds are available for use by State highway traffic safety programs to support the development and implementation of effective State programs that, among other things, improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of State traffic safety data. 23 U.S.C. 405(c)(1).

Buy America provides that NHTSA "shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States." 23 U.S.C. 313. However, NHTSA may waive those requirements if "(1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent." 23 U.S.C. 313(b). In this instance, NHTSA has determined that a non-availability waiver is appropriate for the printers that Ohio's TSO seeks to purchase using Federal grant funds.

Ohio's TSO seeks a waiver to purchase 250 Brother Pocket Jet 6 Plus printer vehicle kits at \$468.90 per unit to be used in Ohio's mobile ticketing e-citation system and software package as part of a pilot program.<sup>2</sup> Ohio indicates that it has used the Brother printer in enforcement vehicles for several years and it has proven to be a durable mobile printing device for the type of environment they are used in and the applications used by law enforcement.

Ohio's TSO is unable to identify any domestically manufactured mobile printers that meet the requirements specified for the mobile printers for use in its enforcement vehicles.<sup>3</sup> NHTSA

conducted similar assessments<sup>4</sup> and was unable to locate domestic manufacturers of mobile printers with the specifications required by Ohio's TSO. Since a mobile printer that meets the requirements identified by TSO for use by its police officers is unavailable from a domestic manufacturer, the Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(2), NHTSA finds that it is appropriate to grant a waiver of the Buy America requirement to TSO in order to purchase 250 Brother Pocket Jet 6 Plus printer vehicle kits. This waiver applies to Ohio and all other States seeking to use section 405(c) and eligible section 408 funds to purchase 250 Brother Pocket Jet 6 Plus printer vehicle kits for the purposes mentioned herein. This waiver will continue through fiscal year 2015 and will allow the purchase of these items as required for Ohio's TSO. Accordingly, this waiver will expire at the conclusion of fiscal year 2015 (September 30, 2015). In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), NHTSA is providing this notice as its finding that a waiver of the Buy America requirement is appropriate for the Brother Pocket Jet 6 Plus printer vehicle kits.

Written comments on this finding may be submitted through any of the methods discussed above. NHTSA may reconsider this finding, if through comment, it learns of additional relevant information regarding its decisions to grant and deny TSO's waiver request.

This finding should not be construed as an endorsement or approval of any products by NHTSA or the U.S. Department of Transportation. The United States Government does not endorse products or manufacturers.

**Authority:** 23 U.S.C. 313; Pub. L. 110-161.

<sup>1</sup> 23 U.S.C. 408 was repealed by the Moving Ahead for Progress in the 21st Century (MAP-21) Act, Public Law 112-141 § 31109(d), 126 Stat. 756 (2012), and recodified at 23 U.S.C. 405(c).

<sup>2</sup> As part of its initial request, TSO sought a waiver for vehicle printer mounts. However, TSO has withdrawn its waiver request for those items.

<sup>3</sup> TSO requires mobile printers that are small (10.04" long x 2.17" width x 1.18" height), 300 x 300

DPI, Bluetooth enabled, direct thermal, uses full letter size page (8½" x 11") and prints at 6 pages per minute.

<sup>4</sup> NHTSA conducted internet searches and reviewed several Web sites that catalog products domestic made products: [www.usaonly.us](http://www.usaonly.us); [www.americansworking.com](http://www.americansworking.com); [www.madeinamericaforever.com](http://www.madeinamericaforever.com); [www.unionbuiltpc.com](http://www.unionbuiltpc.com) and [www.madeinusa.org](http://www.madeinusa.org).

Issued in Washington, DC, under authority delegated in 49 CFR part 1.95.

**O. Kevin Vincent,**  
Chief Counsel.

[FR Doc. 2015-03696 Filed 2-23-15; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF THE TREASURY

### Proposed Collection; Comment Request; TIGTA Generic Survey Request

**AGENCY:** Departmental Office, Department of the Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). The Department of the Treasury is soliciting comments on this collection of information that is scheduled to expire July 31, 2015.

**DATES:** Written comments should be received on or before April 27, 2015 to be assured of consideration.

**ADDRESSES:** You may submit comments by email to [Kim.Hyatt@tigta.treas.gov](mailto:Kim.Hyatt@tigta.treas.gov); subject line: Comment on TIGTA Generic Survey Request; or by mail to: Treasury PRA Clearance Officer, Office of Privacy, Transparency, and Records, 1750 Pennsylvania Ave., NW., Washington DC, 20220.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or request a copy of the information collection can be directed to the addresses provided above.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 1505-0217.  
*Title:* Treasury Inspector General for Tax Administration (TIGTA) Generic Survey.

*Abstract:* The TIGTA's Office of Audit's mission is to provide independent oversight of IRS activities. Through its audit programs TIGTA promotes efficiency and effectiveness in the administration of internal revenue laws, including the prevention and detection of fraud, waste, and abuse affecting tax administration. To accomplish this, TIGTA Office of Audit at times finds it necessary to contact a limited number of taxpayers (including businesses) for various reasons.

*Type of Review:* Extension without change of a currently approved collection.

*Affected Public:* Individuals and Households; Private sector: Businesses or other for-profits.

*Estimated Number of Respondents:* 2,500.

*Estimated Burden Hours:* 2,500.

*Request For Comment:* Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (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 the burden of the 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 the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 19, 2015.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2015-03697 Filed 2-23-15; 8:45 am]

**BILLING CODE 4810-25-P**

**DEPARTMENT OF THE TREASURY**

**Privacy Act of 1974, as Amended; System of Records Notice**

**AGENCY:** Department of the Treasury

**ACTION:** Notice of proposed alteration of a Privacy Act system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury, gives notice of proposed alteration of a system of records entitled "Treasury .016—Reasonable Accommodations Records."

**DATES:** Comments must be received no later than March 26, 2015. The proposed altered system will become effective April 6, 2015, unless the Department of the Treasury receives comments which cause reconsideration of this action.

**ADDRESSES:** You may submit comments, identified by one of the following methods:

- Fax: 202-622-3895.

• *Mail:* Helen Goff Foster, Deputy Assistant Secretary for Privacy, Transparency, and Records, Office of Privacy, Transparency, and Records, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

*Instructions:* All submissions received must include the agency name for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For access to read background documents or comments received go to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For general questions and for privacy issues please contact: Helen Goff Foster (202-622-0790), Deputy Assistant Secretary for Privacy, Transparency, and Records, Office of Privacy, Transparency, and Records, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:** The Department of the Treasury is proposing to alter this Privacy Act system of records to authorize the routine use of this information in non-federal administrative proceedings specifically, state unemployment compensation award appeals—and requests for leave under the Family and Medical Leave Act of 1993.

A notice describing this system of records was most recently published at 79 FR 23405, April 28, 2014. Treasury proposes to alter the system to include the collection of this data within the Categories of individuals covered by the system, and Routine uses of records maintained in the system, including categories of users and the purposes of such uses.

This system will be included in the Department of the Treasury's inventory of record systems.

**Helen Goff Foster,**  
*Deputy Assistant Secretary for Privacy, Transparency, and Records.*

**TREASURY .016**

**SYSTEM NAME:**

Reasonable Accommodations Records  
\* \* \* \* \*

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

**CURRENTLY READS:**

Categories of individuals covered by this system include applicants for employment and employees who

request or receive reasonable accommodations under the Rehabilitation Act of 1973 or ADAAA. This also includes participants in Treasury programs and activities, visitors at Treasury facilities, authorized individuals or representatives (e.g., family member or attorney) who request a reasonable accommodation on behalf of an applicant for employment or employee, as well as former employees and members of the public who request or receive a reasonable accommodation during their employment with Treasury or when visiting a Treasury facility.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

**NEW:**

Categories of individuals covered by this system include applicants for employment and employees who request or receive reasonable accommodations under the Rehabilitation Act of 1973 or ADAAA, or leave under the Family and Medical Leave Act of 1993 (FMLA). This also includes participants in Treasury programs and activities, visitors at Treasury facilities, authorized individuals or representatives (e.g., family member or attorney) who request a reasonable accommodation on behalf of an applicant for employment or employee, as well as former employees and members of the public who request or receive a reasonable accommodation or leave under the FMLA during their employment with Treasury or when visiting a Treasury facility.

\* \* \* \* \*

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

\* \* \* \* \*

Routine Use B currently reads: B. To another federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the Government is a party to the judicial or administrative proceeding;

New Routine B: B. To another federal agency, a state or local agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a federal or state or local agency when the Government is a party to the judicial or administrative proceeding;

\* \* \* \* \*

[FR Doc. 2015-03641 Filed 2-23-15; 8:45 am]

**BILLING CODE 4810-25-P**

**DEPARTMENT OF THE TREASURY**

**United States Mint**

**Pricing for the 2015 March of Dimes Special Silver Set**

**AGENCY:** United States Mint, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The United States Mint is announcing pricing for the 2015 March of Dimes Special Silver Set as follows:

Coin	Price
March of Dimes Special Silver Set .....	\$61.95

**FOR FURTHER INFORMATION CONTACT:** Mary Lhotsky, Acting Associate Director for Sales and Marketing; United States

Mint; 801 Ninth Street NW; Washington, DC 20220; or call 202-354-7500.

**Authority:** 31 U.S.C. 5111, 5112 & 9701.

Dated: February 18, 2015.

**Richard A. Peterson,**

*Deputy Director for Manufacturing and Quality, United States Mint.*

[FR Doc. 2015-03722 Filed 2-23-15; 8:45 am]

**BILLING CODE P**





# FEDERAL REGISTER

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## Part II

### Department of Agriculture

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Rural Business-Cooperative Service  
Rural Housing Service  
Rural Utilities Service  
Farm Service Agency

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7 CFR Parts 1709, 1714, 1735, *et al.*

Rural Development Regulations—Update to FmHA References and to  
Census References; Direct Final Rule

**DEPARTMENT OF AGRICULTURE****Rural Utilities Service**

**7 CFR Parts 1709, 1714, 1735, 1737, 1738, 1739, 1740, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, and 1783**

**Rural Business-Cooperative Service****Rural Housing Service****Rural Utilities Service****Farm Service Agency**

**7 CFR Parts 1806, 1810, 1822, 1900, 1901, 1902, 1910, 1924, 1925, 1927, 1940, 1942, 1944, 1948, 1950, 1951, 1955, 1956, 1957, 1962, and 1980**

**Rural Housing Service**

**7 CFR Parts 3550, 3560, 3570, and 3575**

**Rural Business-Cooperative Service****Rural Utilities Service**

**7 CFR Parts 4274, 4279, 4280, 4284, 4288, and 4290**

**RIN 0570-AA30**

**Rural Development Regulations—  
Update to FmHA References and to  
Census References**

**AGENCY:** Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, Farm Service Agency, U.S. Department of Agriculture (USDA).

**ACTION:** Direct final rule.

**SUMMARY:** Rural Development (RD) is amending its regulations by updating references to the Farmers Home Administration (FmHA) and clarifying and updating references to the census data. These actions will provide consistency in terminology between program regulations. In addition, clarifying and updating references to census data is needed to account for changes to the decennial Census, which, starting with the 2010 decennial Census is no longer reporting income and unemployment data. Additional revisions are being implemented to show the regulations that do not apply to the Farm Service Agency (FSA) and to remove outdated or unnecessary language.

**DATES:** This rule will become effective April 27, 2015 without further action unless the Agency receives significant written adverse comments or written notices of intent to submit adverse comments on or before March 26, 2015.

If the Agency receives significant adverse comments or notices, the Agency will publish a timely notice in the **Federal Register** withdrawing those provisions on which adverse comment were received.

**ADDRESSES:** You may submit adverse comments or notice of intent to submit adverse comments to this rule by any of the following methods:

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

- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail, or other courier service requiring a street address, to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street SW., 7th Floor address listed above.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Meardon, Policy Advisor, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3201, 1400 Independence Avenue SW., Washington, DC 20250-3225; email: [ken.meardon@wdc.usda.gov](mailto:ken.meardon@wdc.usda.gov); telephone (202) 260-8296.

**SUPPLEMENTARY INFORMATION:****Classification**

This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

**Catalog of Federal Domestic Assistance**

RD's programs affected by this rulemaking are shown in the Catalog of Federal Domestic Assistance (CFDA) with numbers as indicated:

- 10.350—Technical Assistance to Cooperatives
- 10.352—Value-Added Producer Grants (4284)
- 10.405—Farm Labor Housing Loans and Grants (3560)
- 10.410—Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans) (3550)
- 10.415—Rural Rental Housing Loans
- 10.420—Rural Self-Help Technical Assistance
- 10.427—Rural Rental Assistance Payments (3560)
- 10.433—Rural Housing Preservation Grants

- 10.438—Rural Rental Housing Program—Guaranteed Loans
- 10.441—Technical and Supervisory Assistance Grants
- 10.448—Rural Housing Service Multi-Family Housing Rural Housing Voucher Demonstration Program (3560)
- 10.759—Special Evaluation Assistance for Rural Communities and Households Program (SEARCH) (1774)
- 10.760—Water and Waste Disposal Systems for Rural Communities (1779, 1780)
- 10.761—Technical Assistance and Training Grants (1775)
- 10.762—Solid Waste Management Grants (1775)
- 10.763—Emergency Community Water Assistance Grants (1778)
- 10.766—Community Facilities Loans and Grants (3570, 3575)
- 10.767—Intermediary Relending Program (4274)
- 10.768—Business and Industry Guaranteed Loan Program (4279)
- 10.769—Rural Business Enterprise Grant Program
- 10.770—Water and Waste Disposal Loans and Grants (Section 306C) (1777)
- 10.771—Rural Cooperative Development Grants
- 10.773—Rural Business Opportunity Grant Program
- 10.781—Water and Waste Disposal Systems for Rural Communities—ARRA (1780)
- 10.782—Appropriate Technology Transfer for Rural Areas (4284)
- 10.850—Rural Electrification Loans and Loan Guarantees (1714)
- 10.851—Rural Telephone Loans and Loan Guarantees (1735)
- 10.854—Rural Economic Development Loans and Grants (4280)
- 10.857—State Bulk Fuel Revolving Fund Grants
- 10.858—RUS Denali Commission Grants and Loans
- 10.859—Assistance to High Energy Cost—Rural Communities (1709)
- 10.860—Rural Business Investment Program (4290)
- 10.861—Public Television Station Digital Transition Grant Program (1740)
- 10.862—Water and Waste Disposal Systems for Rural Communities (1776)
- 10.863—Community Connect Grant Program (1739)
- 10-864—Grant Program to Establish a Fund for Financing Water and Wastewater Projects (1783)
- 10.865—Biorefinery Assistance (4279)
- 10.866—Repowering Assistance Program (4288)
- 10.867—Bioenergy Program for Advanced Biofuels (4288)
- 10.868—Rural Energy for America Program (4280)
- 10.870—Rural Microentrepreneur Assistance Program
- 10.871—Small Socially-Disadvantaged Producer Grants (4284)
- 10.886—Rural Broadband Access Loans and Loan Guarantees (1738)

All active CFDA programs can be found at [www.cfda.gov](http://www.cfda.gov) under "Department of Agriculture, Rural

Development.” Programs not listed in this section or not listed on the CFDA Web site but are still being serviced by RD will nevertheless be covered by the requirements of this action.

#### **Executive Order 12372, Intergovernmental Review of Federal Programs**

This action is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### **Executive Order 12988, Civil Justice Reform**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RD has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. Additionally, (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated, in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11.

#### **Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, “Environmental Program.” RD has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

#### **Unfunded Mandates Reform Act**

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and Tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

#### **Regulatory Flexibility Act**

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), RD certifies that this rule will not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 501). RBS made this determination based on the fact that this

action only impacts internal Agency procedures for determining how much of available program funds are allocated to each state. Small entities will not be impacted to a greater extent than large entities.

#### **Executive Order 13132, Federalism**

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

#### **Executive Order 13175, Consultation and Coordination With Indian Tribal Governments**

This executive order imposes requirements on RD in the development of regulatory policies that have Tribal implications or preempt tribal laws. RD has determined that the rule does not, to our knowledge, have a substantial direct effect on one or more Indian Tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian Tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If a Tribe determines that this rule has implications of which RD is not aware and would like to engage with RD on this rule, please contact RD’s Native American Coordinator at (202) 690–1681 or [AIAN@wdc.usda.gov](mailto:AIAN@wdc.usda.gov).

#### **Paperwork Reduction Act**

There are no reporting and recordkeeping requirements associated with this rule.

#### **E-Government Act Compliance**

RD is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies, to provide increased opportunities for citizens to access Government information and services electronically.

#### **I. Background and Discussion**

RD is amending numerous RD regulations in two broad areas—references to the Farmers Home Administration and references to Bureau of Census data. For those RD regulations affected by these two areas, RD is also making several additional changes by updating the text with regard to applicability of the regulations to the FSA; removing or updating

outdated text, as applicable; and removing unnecessary text.

#### **II. Discussion of Changes**

##### *A. Farmers Home Administration (FmHA)*

Many RD regulations still contain references to the Farmers Home Administration, or FmHA, which was the predecessor agency to both RD and FSA.

FmHA references most frequently encountered in RD regulations are in reference to forms, instructions, and addresses. RD is either removing references that are no longer necessary or updating the FmHA references to reflect the appropriate entity, as applicable. New references will be to RD, Agency, to the specific RD agency (Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service), to the “government,” or to the United States, depending on the context of the regulation. Where necessary in individual RD regulations, definitions have been changed or added to reflect the new reference(s).

##### *B. Census References*

Many RD regulations refer to census data as the source to be used for various population-, income-, and unemployment-related data. RD is amending those portions of its regulations that reference U.S. Bureau of Census (Census Bureau) and its data primarily due to changes in the data being reported by the Census Bureau in the decennial Census.

Other changes are being implemented to further consistency among RD programs in referencing sources to be used for population-related data requirements and provisions and to provide clarification of how provisions are implemented. Finally, RD is removing outdated or unnecessary text.

The following paragraphs discuss these changes.

1. *Census Bureau data.* RD allocates the funding for a number of its programs using formulas that rely on data supplied by the Census Bureau, frequently as found in the decennial Census. Most RD regulations refer to this as “using the latest census data available” or similar language.

Starting with the 2010 census, however, the Census Bureau no longer reports income data in the decennial Census. Thus, RD needs to identify an alternative source for income-related data.

After examining several alternative data sources, RD determined that income data published by the Census Bureau in the American Community

Survey (ACS), as found in the 5-year survey component of the ACS, provides the best source of data for estimates of state-level income and poverty data, even though such are no longer being published in the decennial Census. RD is also aware that the data contained in the ACS may not meet the needs of a specific program and that the ACS may at some point in the future be replaced or discontinued. For these reasons, RD is using “5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data” to indicate the source of the data to be used.

In some instances, RD regulations refer to using other data sources for income-related data if the ACS or Census Bureau data are outdated. RD is retaining that concept where it currently exists, but modifying the language to address the revision noted in the preceding paragraph.

2. *Consistency and clarification.* As described below, RD is making several changes to create consistency between the RD programs.

a. Whenever a regulation is directing the use of the decennial Census as the data source, RD is using “the most recent decennial Census of the United States (decennial Census)” consistently throughout the RD regulations. This change brings consistency among the three RD agencies and their regulations.

b. RD regulations apply not only to what most people understand as the 50 states of the United States, but also to the U.S. Virgin Islands, Puerto Rico, Guam, American Samoa, the Marshall Islands, etc. The decennial Census does not report population for most of these territories. Some, but not all, of the RD regulations clearly identify how population data are to be obtained for these other areas. To make this consistent, RD is revising text to make clear in all its regulations the data sources to be used. Specifically, if the decennial Census does not provide the applicable population information, then RD will determine the applicable population data based on available population data.

### C. FSA Related Changes

When they were operating as the Farmers Home Administration, RD and FSA shared many regulations. With RD and FSA now separate entities, many of the regulations in 7 CFR no longer apply to FSA. Some of these regulations have already been identified as no longer being applicable to FSA. There are a few regulations, however, that still need to be identified as no being applicable to FSA and RD is adding text to that effect. The regulations are: 7 CFR 1900 subpart

A, 7 CFR 1902 subpart A, and 7 CFR 1910 subpart B.

### D. Outdated and/or Unnecessary Text in Those Parts and Subparts That Contain Either Reference to Census Bureau or FmHA

Once RD identified those CFR parts that need updating with regard to references to FmHA and the Census Bureau, RD also identified a number of other outdated or unnecessary material, and thus is revising such material. In brief, these changes:

- Remove reference to Rand McNally and Company as an alternative source of population data (7 CFR 1735.2, 7 CFR 1737.2);
- Remove references to a Federal Communications Commission Web site and to a Census Tiger Map (7 CFR 1740.8(b)(1)(i) and (c)(1));
- Remove a series of Agency forms from 7 CFR 1980, Subpart E and their conforming references. Specifically, RD will no longer publish in the CFR RD forms identified as: (1) Appendix A, (2) Appendix B, (3) Appendix F, (4) Exhibits A through C to Appendix I to Subpart E of Part 1980, and (5) Exhibits A through C to Appendix K to Subpart E of Part 1980. The applicable forms will continue to be available in RD offices and through RD’s Web site;
- Remove reference to the year 2000 as it currently modifies “Census block” in 7 CFR 1709(b);
- Remove the first paragraph in the definition of Rural and rural area in 7 CFR 3575.1. This paragraph references Fiscal Year 1999 and is thus obsolete; and
- Update the reference to the Legislative Affairs and Public Information Staff (LAPIS) with the Legislative and Public Affairs Staff (LAPAS) (7 CFR parts 1942, 1944, 1948, and 1980).

### E. Other

For the Rural Economic Development Loan and Grant (REDLG) program, RD is modifying both the definition of Rural or rural area” (7 CFR 4280.3) and the scoring criterion associated with the decline in population for the county where the project is physically located (7 CFR 4280.42(b)(7)).

RD is modifying the definition of “Rural or rural area” for REDLG to make the definition consistent with the definition for “rural or rural area” found in the Rural Microentrepreneur Assistance Program (RMAP), whose definition is more comprehensive and consistent with other definitions with Rural Business-Cooperative Service programs.

RD is modifying the identified scoring criterion by adding reference to making the calculation using the an “equivalent time frame” in those instances where data is used from a data source other than the decennial Census.

### List of Subjects

#### 7 CFR Part 1709

Administrative practice and procedure, Electric utilities, Grant programs—energy, Rural areas.

#### 7 CFR Part 1714

Electric power, Loan programs—energy, Rural areas.

#### 7 CFR Part 1735

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

#### 7 CFR Part 1737

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas.

#### 7 CFR Part 1738

Broadband, Loan programs—communications, Rural areas, Telecommunications, Telephone.

#### 7 CFR Part 1739

Broadband, Grant programs—Communications, Rural areas, Telecommunications, Telephone.

#### 7 CFR Part 1740

Grant programs—Digital televisions; Communications, Rural areas, Television.

#### 7 CFR Part 1774

Community development, Grant programs, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply.

#### 7 CFR Part 1775

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

#### 7 CFR Part 1776

Agriculture, Community development, Community facilities, Credit, Grant programs—housing and community development, Nonprofit organizations, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water pollution control, Water resources, Water supply, Watersheds.

*7 CFR Part 1777*

Community development, Community facilities, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

*7 CFR Part 1778*

Community development, Community facilities, Grant programs—Housing and Community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

*7 CFR Part 1779*

Loan programs—housing and community development, Rural areas, Waste treatment and disposal, Water supply.

*7 CFR Part 1780*

Community development, Community facilities, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

*7 CFR Part 1781*

Community development, Community facilities, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

*7 CFR Part 1783*

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

*7 CFR Part 1806*

Agriculture, Flood insurance, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Rural areas.

*7 CFR Part 1810*

Agriculture, Loan programs—agriculture, Loan programs—Housing and community development, Low and moderate income housing, Rural areas.

*7 CFR Part 1822*

Loan programs—Housing and community development, Low and

moderate income housing, Nonprofit organizations, Rural areas.

*7 CFR Part 1900*

Administrative practice and procedure, Authority delegations (Government agencies), Conflict of interests, Government employees, Grant programs—agriculture, Grant programs—housing and community development, Loan programs—agriculture, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

*7 CFR Part 1901*

Agriculture, Civil rights, Fair housing, Grant programs—agriculture, Grant programs—housing and community development, Grant programs—Indians, Historic preservation, Indians, Intergovernmental relations, Loan Programs—agriculture, Loan programs—housing and community development, Marital status discrimination, Minimum wages, Religious discrimination, Reporting and recordkeeping requirements, Rural areas, Sex discrimination.

*7 CFR Part 1902*

Accounting; Banks, banking; Grant programs—agriculture, Grant programs—housing and community development; Loan programs—agriculture; Loan programs—housing and community development, Reporting and recordkeeping requirements.

*7 CFR Part 1910*

Agriculture, Credit, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

*7 CFR Part 1924*

Agriculture, Administrative practice and procedures, Claims, Credit, Grant programs—housing and community development, Housing Standards, Loan programs—agriculture, Low and moderate income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas.

*7 CFR Part 1925*

Agriculture, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Rural areas, Taxes.

*7 CFR Part 1927*

Agriculture, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Rural areas.

*7 CFR Part 1940*

Agriculture, Environmental protection, Flood plains, Grant programs—agriculture, Grant programs—housing and community development, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas, Truth in lending.

*7 CFR Part 1942*

Business and industry, Community facilities, Fire prevention, Grant programs—business, Grant programs—housing and community development, Grant programs—Indians, Indians, Loan programs—agriculture, Loan programs—housing and community development, Loan programs—Indians, Loan programs—natural resources, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

*7 CFR Part 1944*

Administrative practice and procedure, Aged, Cooperatives, Fair housing, Grant programs—housing and community development, Home improvement, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Manufactured homes, Migrant labor, Rent subsidies, Reporting requirements, Rural areas.

*7 CFR Part 1948*

Coal, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Uranium.

*7 CFR Part 1950*

Accounting, Loan programs—agriculture, Loan programs—housing and community development, Military personnel, Rural areas.

*7 CFR Part 1951*

Accounting, Claims, Community facilities, Credit, Disaster assistance, Government employees, Grant programs—housing and community development, Housing, Income taxes, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas, Wages.

*7 CFR Part 1955*

Agriculture, Drug traffic control, Government property, Loan programs—agriculture, Loan programs—housing

and community development, Low and moderate income housing, Rural areas.

7 CFR Part 1956

Accounting, Business and industry, Claims, Loan programs—agriculture, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1957

Loan programs—housing and community development, Low and moderate income housing, Rural areas.

7 CFR Part 1962

Agriculture, Bankruptcy, Drug traffic control, Government property, Loan programs—agriculture, Loan programs—housing and community development, Rural areas.

7 CFR Part 1980

Agriculture, Business and industry, Community facilities, Credit, Disaster assistance, Livestock, Loan programs—agriculture, Loan programs—business, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 3550

Administrative practice and procedure, Environmental impact statements, Fair housing, Grant programs—housing and community development, Housing, Loan programs—housing and community development, Low and moderate income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 3560

Accounting, Administrative practice and procedure, Aged, Conflict of interests, Government property management, Grant programs—Housing and community development, Insurance, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 3570

Administrative practice and procedure, Fair Housing, Grant programs—housing and community development, ousing, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 3575

Loan programs—agriculture.

7 CFR Part 4274

Community development, Loan programs—business, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 4279

Loan programs—business, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 4280

Loan programs—Business and industry, Economic development, Energy, Energy efficiency improvements, Feasibility studies, Grant programs, Guaranteed loan programs, Renewable energy systems, Rural areas.

7 CFR Part 4284

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply.

7 CFR Part 4288

Administrative practice and procedure, Energy—advanced biofuel, Renewable biomass, Reporting and recordkeeping.

7 CFR Part 4290

Community development, Government securities, Grant programs—business, Securities, Small businesses.

For the reasons discussed above, Rural Development is amending chapters XVII, XVIII, XXXV, and XLII of title 7, of the Code of Federal Regulations as follows

CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 1709—ASSISTANCE TO HIGH ENERGY COST COMMUNITIES

■ 1. The authority citation for part 1709 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 901 et seq.

Subpart B—RUS High Energy Cost Grant Program

§ 1709.107 [Amended]

■ 2. Amend § 1709.107(b) by removing “2000 Census block” and adding “Census block according to the most recent decennial Census of the United States (decennial Census)” in its place.

■ 3. Revise § 1709.123(c)(2) to read as follows:

§ 1709.123 Evaluation criteria and weights.

\* \* \* \* \*

(c) \* \* \*

(2) *Rurality*. Priority consideration may be given to proposals that serve smaller rural communities. Applications will be scored based on the population of the largest incorporated cities, towns or villages or census designated places included within the grant’s proposed target area as determined using the population figures from the most recent decennial Census. If the applicable population figure cannot be based on the most recent decennial Census, RD will determine the applicable population figure based on available population data.

\* \* \* \* \*

Subpart C—Bulk Fuel Revolving Fund Grant Program

■ 4. Revise § 1709.210(c)(3) to read as follows:

§ 1709.210 Application process.

\* \* \* \* \*

(c) \* \* \*

(3) *Assessment of needs and potential beneficiaries*. The application must provide estimates of the number, location and population of potentially eligible areas in the State and their estimated fuel needs and costs. The section must also describe the criteria used to identify eligible areas, including the characteristics that make fuel deliveries by surface transport impossible or impracticable. The description of beneficiary communities should provide a detailed breakdown of the density profile of the area to be served by eligible projects. Indicate to what extent persons in eligible areas live outside of communities of 2,500 persons or more, communities of 5,000 or more or outside of communities of 20,000 or more. All population estimates should be based on the most recent decennial Census of the United States. If the applicable population estimate cannot be based on the most recent decennial Census, RD will determine the applicable population figure based on available population data. All representations should be supported with exhibits such as maps, summary tables and references to official information sources.

\* \* \* \* \*

**PART 1714—PRE-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS**

■ 5. The authority citation for part 1714 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*; and 6941 *et seq.*

**Subpart A—General**

■ 6. Revise the second and third sentences in § 1714.5(d) to read as follows:

**§ 1714.5 Determination of interest rates on municipal rate loans.**

\* \* \* \* \*  
(d) \* \* \* The method used to determine this rate is set forth in the regulations of the Rural Housing Service at 7 CFR 1942.17(f)(1) and (4). Pursuant to the RUS rule, the interest rates are set using as guidance the average of the Bond Buyer Index for the four weeks prior to the first Friday of the last month before the beginning of the quarter.  
\* \* \*

■ 7. Revise § 1714.7(b)(2)(i) and (ii) to read as follows:

**§ 1714.7 Interest rate cap.**

\* \* \* \* \*  
(b) \* \* \*  
(2) \* \* \*  
(i) To qualify under the consumer income test, the borrower must include in its loan application information about the location of its residential consumers. The borrower must provide to RUS, based on the most recent data available at the time of loan application, either the number of consumers in each county it serves or the number of consumers in each census tract it serves. Using 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data, RUS will compare, on a weighted average basis, the average per capita and median household income of the counties or census tracts served by the borrower with state figures.

(ii) If there is reason to believe that the ACS or other Census Bureau data does not accurately represent the economic conditions of the borrower's consumers, the reasons will be documented and the borrower may furnish, or RD may obtain, additional information regarding such economic conditions. Information must consist of reliable data from local, regional, State, or Federal sources or from a survey conducted by a reliable impartial source. The Administrator has the sole discretion to determine whether such data submitted by the borrower is sufficient to determine whether the

borrower qualifies under the consumer income test.  
\* \* \* \* \*

**PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS-TELECOMMUNICATIONS PROGRAM**

■ 8. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

**Subpart A—General**

■ 9. In § 1735.2, revise the definition of "Rural area" to read as follows:

**§ 1735.2 Definitions.**

\* \* \* \* \*  
*Rural area* means any area of the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau) not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 5,000 inhabitants. The population figure is obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data. For purposes of the "rural area" definition, the character of an area is determined as of a time the initial loan for the system is made.  
\* \* \* \* \*

**Subpart B—Loan Purposes and Basic Policies**

■ 10. Revise § 1735.10(g) to read as follows:

**§ 1735.10 General.**

\* \* \* \* \*  
(g) For the purpose of paragraph (a)(2) of this section, rural areas means any area that is not located within a city, town, or incorporated area that has a population of greater than 20,000 inhabitants or within an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants. For the purpose of the definition of rural area,

(1) The population figure is obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine

the applicable population figure based on available population data; and  
(2) An urbanized area means a densely populated territory as defined in the most recent decennial Census.

**PART 1737—PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED TELECOMMUNICATIONS LOANS**

■ 11. The authority citation for part 1737 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

■ 12. In § 1737.2, revise the definition of "Rural area" to read as follows:

**§ 1737.2 Definitions.**

\* \* \* \* \*  
*Rural area* means any area of the United States, its territories and possessions (including any area within the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau) not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 5,000 inhabitants. The population figure is obtained from the most recent decennial Census of the United States. If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data. For purposes of the "rural area" definition, the character of an area is determined as of a time the initial loan for the system is made.  
\* \* \* \* \*

**PART 1738—RURAL BROADBAND ACCESS LOANS AND LOAN GUARANTEES**

■ 13. The authority citation for part 1738 continues to read as follows:

Authority: Pub. L. 107-171, 7 U.S.C. 901 *et seq.*

**Subpart A—General**

■ 14. In § 1738.2(a), revise the definition of "Rural area" to read as follows:

**§ 1738.2 Definitions.**

(a) \* \* \*  
*Rural area* means any area, as confirmed by the most recent decennial Census of the United States (decennial Census), which is not located within:  
(i) A city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or  
(ii) An urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000

inhabitants. For purposes of the definition of rural area, an urbanized area means a densely populated territory as defined in the most recent decennial Census.

\* \* \* \* \*

**PART 1739—BROADBAND GRANT PROGRAM**

■ 15. The authority citation for part 1739 continues to read as follows:

**Authority:** Title III, Pub. L. 108–199, 118 Stat. 3.

■ 16. In § 1739.3, revise the definition of “Rural area” to read as follows:

**§ 1739.3 Definitions.**

\* \* \* \* \*

*Rural area* means any area, as confirmed by the most recent decennial Census of the United States (decennial Census), which is not located within:

(1) A city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or

(2) An urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants. For purposes of the definition of rural area, an urbanized area means a densely populated territory as defined in the most recent decennial Census.

\* \* \* \* \*

**PART 1740—PUBLIC TELEVISION STATION DIGITAL TRANSITION GRANT PROGRAM**

■ 17. The authority citation for part 1740 continues to read as follows:

**Authority:** Consolidated Appropriations Act, 2005; Title III: Rural Development Programs; Rural Utilities Service; Distance Learning, Telemedicine, and Broadband Program; Pub. L. 108–447.

**Subpart A—Public Television Station Digital Transition Grant Program**

**§ 1740.8 [Amended]**

■ 18. Amend § 1740.8 by:

■ a. In paragraph (b)(1)(i), removing “<http://www.fcc.gov/fcc-bin/audio/tvq.html>” and removing “, overlaid on a Census Tiger Map. The map also shows counties covered” and

■ b. In paragraph (c)(1), removing the last sentence.

**PART 1774—SPECIAL EVALUATION ASSISTANCE FOR RURAL COMMUNITIES AND HOUSEHOLDS PROGRAM**

■ 19. The authority citation for part 1774 continues to read as follows:

**Authority:** 7 U.S.C. 1926(a)(2)(C).

**Subpart A—General Provisions**

■ 20. In § 1774.2, revise the definitions of “Financially distressed area” and “Rural area” to read as follows:

**§ 1774.2 Definitions.**

\* \* \* \* \*

*Financially distressed area.* An area is considered financially distressed if the median household income of the area to be served is either below the poverty line or below 80 percent of the statewide non-metropolitan median household income according to the 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data. If there is reason to believe that the ACS or other Census Bureau data does not accurately represent the median household income of the area to be served, the reasons will be documented and the borrower may furnish, or RD may obtain, additional information regarding such median household income data. Information must consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source.

\* \* \* \* \*

*Rural area.* For the purposes of this SEARCH program, any area not in a city or town with a population of 2,500 or fewer, according to the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

\* \* \* \* \*

**PART 1775—TECHNICAL ASSISTANCE GRANTS**

■ 21. The authority citation for part 1775 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

**Subpart A—General Provisions**

■ 22. In § 1775.2, revise the definition of “Rural area” to read as follows:

**§ 1775.2 Definitions.**

\* \* \* \* \*

*Rural area.* Any area not in a city or town with a population in excess of 10,000, according to the most recent decennial Census of the United States. If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

\* \* \* \* \*

**PART 1776—HOUSEHOLD WATER WELL SYSTEM GRANT PROGRAM**

■ 23. The authority citation for part 1776 continues to read as follows:

**Authority:** 7 U.S.C. 1926e.

**Subpart A—General**

■ 24. In § 1776.3, revise the definition of “Eligible individual” to read as follows:

**§ 1776.3 Definitions.**

\* \* \* \* \*

*Eligible individual* means an individual who is a member of a household the members of which have a combined income (for the most recent 12-month period for which the information is available) that is not more than 100 percent of the median nonmetropolitan household income for the State or territory in which the individual resides, according to 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data. If there is reason to believe that the ACS or other Census Bureau data does not accurately represent the median nonmetropolitan household income for the State or territory in which the individual resides, the reasons will be documented and the applicant may furnish, or RD may obtain, additional information regarding such median household income data. Information must consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source.

\* \* \* \* \*

**PART 1777—SECTION 306C WWD LOANS AND GRANTS**

■ 25. The authority citation for part 1777 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

■ 26. In § 1777.4, revise the definition of “Rural areas” to read as follows:

**§ 1777.4 Definitions.**

\* \* \* \* \*

*Rural areas.* Includes unincorporated areas and any city or town with a population not in excess of 10,000 inhabitants located in any of the 50 States, the Commonwealth of Puerto Rico, the Western Pacific Territories, Marshall Islands, Federated States of Micronesia, Republic of Palau, and the U.S. Virgin Islands. The population figure is obtained from the most recent decennial Census of the United States. If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine



the applicable population figure based on available population data.

\* \* \* \* \*

■ 27. Revise § 1777.12(a)(1) to read as follows:

**§ 1777.12 Eligibility.**

(a) \* \* \*

(1) Per capita income of the residents is not more than 70 percent of the most recent national average per capita income, as determined by 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data. If there is reason to believe that the ACS or other Census Bureau data does not accurately represent the per capita income of the residents, the reasons will be documented and the borrower/applicant may furnish, or RD may obtain, additional information regarding such per capita income data. Information must consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source, and

\* \* \* \* \*

**PART 1778—EMERGENCY AND IMMINENT COMMUNITY WATER ASSISTANCE GRANTS**

■ 28. The authority citation for part 1778 continues to read as follows:

**Authority:** 5 U.S.C. 301, 7 U.S.C. 1989; 16 U.S.C. 1005.

■ 29. In § 1778.4, revise the definition of “Rural areas” to read as follows:

**§ 1778.4 Definitions.**

\* \* \* \* \*

*Rural areas.* Includes any area not in a city or town with a population in excess of 10,000 inhabitants located in any of the fifty States, the Commonwealth of Puerto Rico, the Western Pacific Territories, Marshall Islands, Federated States of Micronesia, Republic of Palau, and the U.S. Virgin Islands. The population figure is obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

\* \* \* \* \*

■ 30. Revise § 1778.10(a)(1) and (2) to read as follows:

**§ 1778.10 Restrictions.**

(a) \* \* \*

(1) Assist any city or town with a population in excess of 10,000 inhabitants. The population figure is obtained from the most recent decennial

Census. If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data. Facilities financed by RUS may be located in non-rural areas. However, loan and grant funds may be used to finance only that portion of the facility serving rural areas, regardless of facility location.

(2) Assist a rural area that has a median household income in excess of the statewide nonmetropolitan median household income as determined by 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data. If there is reason to believe that the ACS or other Census Bureau data does not accurately represent the median household income of the rural area, the reasons will be documented and the applicant may furnish, or RD may obtain, additional information regarding such median household income data. Information must consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source.

\* \* \* \* \*

**§ 1778.13 [Amended]**

■ 31. Amend § 1778.13(b) by removing “decennial census of the United States” and adding “decennial Census” in its place.

**PART 1779—WATER AND WASTE DISPOSAL PROGRAMS GUARANTEED LOANS**

■ 32. The authority citation for part 1779 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

■ 33. In § 1779.2, revise the definition of “Rural and rural area” to read as follows:

**§ 1779.2 Definitions.**

\* \* \* \* \*

*Rural and rural area.* Any area not in a city or town with a population in excess of 10,000 inhabitants. The population figure is obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

\* \* \* \* \*

**PART 1780—WATER AND WASTE LOANS AND GRANTS**

■ 34. The authority citation for part 1780 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

**Subpart A—General Policies and Requirements**

■ 35. Revise the second, third, and fourth sentences of § 1780.1(b) to read as follows:

**§ 1780.1 General.**

\* \* \* \* \*

(b) \* \* \* The median household income of the service area and the nonmetropolitan median household income of the State will be determined from income data from 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data. If there is reason to believe that the ACS or other Census Bureau data does not accurately represent the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or RD may obtain, additional information regarding such median household income data. Information must consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. \* \* \*

■ 36. In § 1780.3, revise the definition of “Rural and rural areas” to read as follows:

**§ 1780.3 Definitions and grammatical rules of construction.**

\* \* \* \* \*

*Rural and rural areas* means any area not in a city or town with a population in excess of 10,000 inhabitants. The population figure is obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

\* \* \* \* \*

■ 37. Revise § 1780.18(c)(2)(ii) to read as follows:

**§ 1780.18 Allocation of program funds.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) The data sources for each criterion identified in paragraph (c)(2) of this section are specified in paragraphs (c)(2)(ii)(A) through (C) of this section. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed 0.05, as follows:

SF = (criterion in paragraph (b)(2)(i)(A) of this section × 50 percent) + (criterion in paragraph (b)(2)(i)(B) × 25 percent) + (criterion in paragraph (b)(2)(i)(C) of this section × 25 percent)

(A) For the criterion specified in paragraph (b)(2)(i)(A) of this section, the most recent decennial Census data.

(B) For the criterion specified in paragraph (b)(2)(i)(B) of this section, 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data.

(C) For the criterion specified in paragraph (b)(2)(i)(C) of this section, the most recent Bureau of Labor Statistics data.

\* \* \* \* \*

**Subpart B—Loan and Grant Application Processing**

■ 38. Revise § 1780.49(b)(2) to read as follows:

**§ 1780.49 Rural or Native Alaskan villages.**

\* \* \* \* \*

(b) \* \* \*

(2) *Rural or Native Alaskan village.* A rural or Native Alaskan community which meets the definition of a village under State statutes and does not have a population in excess of 10,000 inhabitants according to the most recent decennial Census.

\* \* \* \* \*

**PART 1781—RESOURCE CONSERVATION AND DEVELOPMENT (RCD) LOANS AND WATERSHED (WS) LOANS AND ADVANCES**

■ 39. The authority citation for part 1781 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

**§ 1781.2 [Amended]**

■ 40. Amend the first sentence of § 1781.2(a) by removing “, successor to the Farmers’s Home Administration” in the first sentence.

**PART 1783—REVOLVING FUNDS FOR FINANCING WATER AND WASTEWATER PROJECTS (REVOLVING FUND PROGRAM)**

■ 41. The authority citation for part 1783 continues to read as follows:

**Authority:** 7 U.S.C. 1926 (a)(2)(B).

**Subpart A—General**

■ 42. In § 1783.3, revise the definition of “Rural and rural area” to read as follows:

**§ 1783.3 What definitions are used in this regulation?**

\* \* \* \* \*

*Rural and rural area* means a city, town or unincorporated area that has a population of no more than 10,000 inhabitants. The population figure is obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

\* \* \* \* \*

**CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE**

**PART 1806—INSURANCE**

■ 43. The authority citation for part 1806 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

**Subpart A—Real Property Insurance**

**§ 1806.1 [Amended]**

■ 44. Amend § 1806.1 by:

- a. In paragraph (a), removing “Rural Housing Service (RHS). Any references herein to the Farmers Home Administration (FmHA) or its employees are intended to mean FSA or RHS, as applicable, and their employees.” and adding “Rural Housing Service (RHS), herein referred to as the “Agency.” in its place;
- b. In paragraphs (b) and (d), removing “the FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place; and
- c. In paragraph (e), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place and removing “interest of the FmHA or its successor agency under Public Law 103–354” and adding “interest of RD” in its place.

**§ 1806.2 [Amended]**

■ 45. Amend § 1806.2 by:

- a. In paragraph (b)(5)(i), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;
- b. In paragraphs (b)(6) introductory text and (b)(6)(i), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- c. In paragraphs (b)(9) and (b)(10) introductory text, removing “FmHA or its successor agency under Public Law

103–354” wherever it occurs and adding “the Agency” in their place;

- d. In paragraph (b)(11) introductory text:
  - i. Removing “FmHA or its successor agency under Public Law 103–354 has” and adding “the Agency has” in its place; and
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 will” and adding “the Agency will” in its place;
  - iii. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;
- d. In paragraph (b)(11)(ii), removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place;
- e. In paragraph (b)(11)(iii), removing “FmHA or its successor agency under Public Law 103–354 is” and adding “the Agency is” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- f. In paragraph (b)(11)(iv) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “The Agency” in its place;
- g. In paragraph (b)(11)(iv)(A), removing “United States of America (Farmers Home Administration or its successor agency under Public Law 103–354)” and adding “United States of America (Rural Development)” in its place and removing “naming FmHA or its successor agency under Public Law 103–354” and adding “naming the Agency” in its place;
- h. In paragraph (b)(11)(iv)(B), removing “United States of America (Farmers Home Administration or its successor agency under Public Law 103–354)” and adding “United States of America (Rural Development)” in its place and removing “by FmHA or its successor agency under Public Law 103–354” and adding “by the Agency” in its place;
- i. In paragraph (b)(11)(iv)(C), removing “the Farmers Home Administration or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- j. In paragraph (c), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place and removing “in which the FmHA or its successor agency under Public Law 103–354” and adding “in which the Agency” in its place;
- k. In paragraph (d)(1) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;

■ l. In paragraph (d)(1)(iii)(B), removing “FmHA or its successor agency under Public Law 103–354” and adding “the” in its place;

■ m. In paragraph (d)(2), removing “against the FmHA or its successor agency under Public Law 103–354” and adding “against the Agency” in its place and removing “FmHA or its successor agency under Public Law 103–354 mortgage” and adding “Agency mortgage” in its place; and

■ n. In paragraph (e), removing “FmHA or its successor agency under Public Law 103–354 loan” and adding “Agency loan” in its place and removing “for FmHA or its successor agency under Public Law 103–354 loans” and adding “for the Agency loans” in its place.

#### § 1806.3 [Amended]

■ 46. Amend § 1806.3 by:

■ a. In paragraphs (a)(1), (b), and (c)(1)(v), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Agency” in their place;

■ b. In paragraph (c)(1)(vii), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Agency” in their place; and

■ c. In paragraph (c)(1)(viii), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Agency” in their place.

#### § 1806.4 [Amended]

■ 47. Amend § 1806.4 by:

■ a. In paragraph (a)(2)(ii), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in their place;

■ b. In paragraph (a)(4), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;

■ c. In paragraph (b)(1), removing “upon demand to FmHA or its successor agency under Public Law 103–354” and adding “upon demand to the Agency” in its place and removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place; and

■ d. In paragraph (b)(2)(i), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “the Agency” in their place.

#### § 1806.5 [Amended]

■ 48. Amend § 1806.5 by:

■ a. In paragraphs (a) introductory text and (i)(2)(ii), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;

■ b. In paragraph (a)(1), removing “the FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place;

■ c. In paragraph (a)(1), removing “FmHA or its successor agency under Public Law 103–354 was” and adding “the Agency was” in its place;

■ d. In paragraphs (a)(2), (b)(1), and (b)(2) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;

■ e. In paragraph (b)(2)(i), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “the Agency’s” in its place and removing “jointly to the FmHA or its successor agency under Public Law 103–354” and adding “jointly to the Agency” in its place;

■ f. In paragraph (c)(1)(iii), removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place;

■ g. In paragraphs (c)(1)(iv) and (e)(2), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;

■ h. In paragraph (g) introductory text, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Agency” in its place;

■ i. In paragraphs (g)(2) and (h), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place; and

■ j. In paragraph (i)(2), removing “FmHA or its successor agency under Public Law 103–354 official” and adding “Agency official” in its place and removing “whether FmHA or its successor agency under Public Law 103–354” and adding “whether the Agency” in its place.

#### § 1806.6 [Amended]

■ 49. Amend § 1806.6 by:

■ a. In the introductory text, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “the Agency” in its place;

■ b. In paragraph (a)(1) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;

■ c. In paragraph (a)(1)(ii), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;

■ d. In paragraph (a)(1)(iii), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Agency” in their place;

■ e. In paragraph (a)(1)(v), removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 account” and adding “Agency account” in its place;

■ f. In paragraph (a)(1)(vii), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;

■ g. In paragraph (c)(2), removing “FmHA or its successor agency under Public Law 103–354 as mortgagee” and adding “Agency as mortgagee” in its place and removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place; and

■ h. In paragraph (c)(3), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “from the FmHA or its successor agency under Public Law 103–354” and adding “from the Agency” in its place.

### Subpart B—National Flood Insurance

#### § 1806.21 [Amended]

■ 50. Amend § 1806.21(a) by removing “Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “Rural Development and Farm Service Agency, herein referred to as the “Agency,”” in its place.

#### § 1806.22 [Amended]

■ 51. Amend § 1806.22 by:

■ a. In the paragraph heading of paragraph (b), removing “Farmers Home Administration or its successor agency under Public Law 103–354” and adding “The Agency” in its place; and

■ b. In the first sentence of paragraph (b), removing “the FmHA or its successor agency under Public Law 103–354 National Office” and adding “the National Office” in its place.

#### § 1806.23 [Amended]

■ 52. Amend § 1806.23(a) by removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place.

#### § 1806.25 [Amended]

■ 53. Amend § 1806.25 by:

■ a. In the introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “The Agency” in its place and

■ b. In paragraph (c)(4), removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place.

### PART 1810—INTEREST RATES, TERMS, CONDITIONS, AND APPROVAL AUTHORITY

■ 54. The authority citation for part 1810 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 14 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Interest Rates, Amortization, Guarantee Fee, Annual Charge, and Fixed Period

#### § 1810.1 [Amended]

- 55. Amend § 1810.1 by:
  - a. In paragraph (a), removing “FmHA or its successor Agency under Public Law 103–354” and adding “the Agency (Rural Business-Cooperative Service and Rural Housing Service of the U.S. Department of Agriculture)” in its place; and
  - b. In paragraph (b), removing “Farmers Home Administration or its successor agency under Public Law 103–354” and adding “U.S. Department of Agriculture” in its place.

#### § 1810.2 [Amended]

- 56. Amend § 1810.2(b) and (c) by removing “FmHA or its successor Agency under Public Law 103–354” and adding “the Agency” in their place.

### PART 1822—Rural Housing Loans and Grants

- 57. The authority citation for part 1822 continues to read as follows:

**Authority:** 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

#### § 1822.261 [Amended]

- 58. Amend § 1822.261 by removing “assistance to FmHA or its successor agency under Public Law 103–354” and adding “Rural Development (RD)” in its place and removing “with an FmHA or its successor agency under Public Law 103–354 employee” and adding “with an RD employee” in its place.

#### § 1822.264 [Amended]

- 59. Amend § 1822.264(b) by removing “The Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “RHS” in its place.

#### § 1822.265 [Amended]

- 60. Amend § 1822.265(a) by removing “FmHA or its successor agency under Public Law 103–354”.

#### § 1822.266 [Amended]

- 61. Amend § 1822.266(e)(4) by removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

#### § 1822.267 [Amended]

- 62. Amend § 1822.267 by:
  - a. In paragraph (b), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;

- b. In paragraph (d), removing “using a form entitled, “((Rural Housing Site) Loan to Nonprofit Corporation)” available at all FmHA or its successor agency under Public Law 103–354 offices”;

- c. In paragraph (e), removing “, and certain information in a guide entitled “Planning and Developing Building Sites” available at all FmHA or its successor agency under Public Law 103–354 offices”;

- d. In paragraph (h), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;

- e. In paragraph (i), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place; and

- f. In paragraph (k)(2), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;

- g. In paragraph (l)(2) introductory text, removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;

- h. In paragraph (l)(2)(i), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;

- i. In paragraph (l)(4), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and

- j. In paragraph (l)(5), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “The government’s” in its place.

#### § 1822.268 [Amended]

- 63. Amend § 1822.268(a) by:
  - a. Removing “charged by FmHA or its successor agency under Public Law 103–354” and adding “charged by Rural Development” in its place;

- b. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place; and

- c. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “RD office” in its place.

#### § 1822.270 [Amended]

- 64. Amend § 1822.270(a) introductory text by removing “FmHA or its successor agency under Public Law 103–354 loan” and adding “RD” in its place.

#### § 1822.271 [Amended]

- 65. Amend § 1822.271 by:
  - a. In paragraph (b)(3)(ii), removing “FmHA or its successor agency under

Public Law 103–354” and adding “Rural Development” in its place and

- b. In paragraph (e), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs in the column labeled “Form No.” and adding “RD” in its place.

#### § 1822.274 [Amended]

- 66. Amend § 1822.274 by:
  - a. In paragraph (b) first sentence, removing “Form FmHA or its successor agency under Public Law 103–354 1927–1 (state), Real Estate Mortgage for \_\_\_\_\_,” will” and adding “Form RD 3550–14, “Real Estate Mortgage or Deed of Trust for (state),” will” in its place and in the first paragraph of the quoted material in the third sentence by removing “basis for the FmHA or its successor agency under Public Law 103–354” and adding “basis for Rural Development” in its place; and
  - b. In paragraph (c)(2), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

#### § 1822.275 [Amended]

- 67. Amend § 1822.275(a) by removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

#### § 1822.278 [Amended]

- 68. Amend § 1822.278(g) by:
  - a. In the first sentence, removing “Form FmHA or its successor agency under Public Law 103–354 1927–1 (state), Real Estate \_\_\_\_\_ for \_\_\_\_\_ (Direct Loan),” will” and adding “Form RD 3550–14, “Real Estate Mortgage or Deed of Trust for (state),” will” in its place; and
  - b. In the first paragraph of the quoted material in the third sentence, removing “basis for the FmHA or its successor agency under Public Law 103–354” and adding “basis for Rural Development” in its place.

### PART 1900—GENERAL

- 69. The authority citation for part 1900 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 7 U.S.C. 6991, *et seq.*; 42 U.S.C. 1480; Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

#### § 1900.1 [Amended]

- 70. Amend § 1900.1 by:
  - a. Removing “the Farmers Home Administration or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place; and
  - b. Adding “This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.” at the end of the section.

**§ 1900.2 [Amended]**

■ 71. Amend § 1900.2 introductory text and paragraph (g) by removing “the Farmers Home Administration or its successor Agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

**§ 1900.3 [Amended]**

■ 72. Amend § 1900.3 by removing “the Farmers Home Administration or its successor Agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

**§ 1900.5 [Amended]**

■ 73. Amend § 1900.5 by removing “the FmHA or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1900.6 [Amended]**

■ 74. Amend § 1900.6(a) and (b) by removing “Farmers Home Administration or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1900.7 [Amended]**

■ 75. Amend § 1900.7 by removing “Administrator of the Farmers Home Administration or its successor agency under Public Law 103–354” and adding “Under Secretary for Rural Development” in its place.

**Subpart C—Applicability of Federal Law****§ 1900.101 [Amended]**

■ 76. Amend § 1900.101 by:  
 ■ a. In the introductory text, removing “Agency” and adding “Rural Development” in its place;  
 ■ b. In paragraph (a), removing “Farmers Home Administration (FmHA) or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place; and  
 ■ c. In paragraph (b), removing “FmHA or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1900.102 [Amended]**

■ 77. Amend § 1900.102 by removing “FmHA or its successor Agency under Public Law 103–354” and “Farmers Home Administration or its successor Agency under Public Law 103–354” wherever they occur and adding “Rural Development” in their place.

**Subpart D—Processing and Servicing Rural Development Assistance to Employees, Relatives, and Associates**

■ 78. Revise the heading of Subpart D to read as set forth above.  
 ■ 79. Revise § 1900.151(a) introductory text and (b) to read as follows:

**§ 1900.151 General.**

(a) The Standards of Ethical Conduct for Employees of the Executive Branch requires the maintenance of high standards of honesty, integrity, and impartiality by employees. To reduce the potential for employee conflict of interest, any processing, approval, servicing or review activity, including access through automated information systems, is conducted only by authorized Rural Development employees who:

\* \* \* \* \*

(b) No provision of this subpart takes precedence over individual program requirements or restrictions relating to eligibility for Rural Development assistance to Rural Development employees, members of families of employees, close relatives, or business or close personal associates of employees.

\* \* \* \* \*

**§ 1900.152 [Amended]**

■ 80. Amend § 1900.152 by:  
 ■ a. Removing “FmHA or its successor Agency under Public Law 103–354” and adding “Rural Development” wherever it occurs in its place in the following definitions:

- i. ‘Applicant or borrower’;
- ii. ‘Assistance’;
- iii. ‘Employee’; and
- iv. ‘Recipient’; and

■ b. Removing “an FmHA or its successor Agency under Public Law 103–354” and adding “a Rural Development” in its place in the definition of ‘Conflict of Interest’.

■ 81. Revise § 1900.153 to read as follows:

**§ 1900.153 Identifying and reporting an employee relationship.**

(a) *Responsibility of applicant.* When an application for assistance is filed, the processing official asks if there is any known relationship or association with a Rural Development employee. The applicant is required to disclose the requested information under pertinent program regulations.

(b) *Responsibility of the Rural Development employee.* A Rural Development employee who knows he or she is related to or associated with an applicant or recipient, regardless of whether the relationship or association is known to others, is required to notify the Rural Development official who is processing or servicing the assistance, in writing. RD Guide Letter 1900–D–1 (available in any RD office) may be used as the notice. If the appropriate official is not known, the State Director should be notified. Regardless of whether the relationship or association is defined in

§ 1900.152, if the employee believes there may be a potential conflict of interest, the Rural Development official who is processing or servicing the assistance may be notified and special handling requested. An employee’s request that the case receive special handling is usually honored.

(c) *Responsibility of the Rural Development official.* When any relationship or association is identified, the Rural Development official completes and submits RD Guide Letter 1900–D–2 to the State Director (or Administrator, under paragraph (e) of this section or § 1900.155(a)). When completed, RD Guide Letter 1900–D–3 is returned by the State Director, the processing official;

(d) *Relationship or association established after application for Rural Development assistance.* If a relationship or association is established after an application has been filed or assistance has been provided, both recipient and employee are required to notify the Rural Development official as described in paragraphs (a) and (b) of this section.

(e) *Relationship or association with a State Office, Finance Office or National Office employee.* If an identified relationship or association is with an employee at a State Office (other than a State Director), Finance Office or National Office, the processing/servicing official completes and submits RD Guide Letter 1900–D–2 to the State Director in the normal manner. The State Director reviews the information, determines the need for special handling, designates the processing/servicing official, completes and submits RD Guide Letter 1900–D–3 to the Administrator for written concurrence. When the Administrator’s concurrence is received, the State Director returns completed RD Guide Letter 1900–D–3 to the original official who completes the action described in paragraph (c) of this section.

(f) *Relationship or association with a State Director.* If an identified relationship or association is with a State Director, the processing/servicing official completes and submits RD Guide Letter 1900–D–2 to the Administrator. The Administrator reviews, determines the need for special handling, designates the processing/servicing official, completes and returns RD Guide Letter 1900–D–3 to the original official who completes the action described in paragraph (c) of this section.

(g) *Change in relationship or association, status of Rural Development assistance, or employee’s duty station.* If the relationship or

association has changed, the application denied or the assistance otherwise terminated, or Rural Development employee's duty station changed, the designated processing/servicing official completes RD Guide Letter 1900-D-2 with the new information and submits it. The review process takes place as described in paragraphs (a) through (e) of this section to determine if processing/servicing activity may return to normal or requires another change. If the assistance is denied or otherwise terminated, the designated official notifies the original official.

#### § 1900.155 [Amended]

■ 82. Amend § 1900.155(a) by removing "FmHA or its successor Agency under Public Law 103-354" and adding "Rural Development" in its place.

#### § 1900.156 [Amended]

■ 83. Amend § 1900.156(g) by removing "FmHA or its successor Agency under Public Law 103-354" and adding "Rural Development" in its place.

### PART 1901—PROGRAM-RELATED INSTRUCTIONS

■ 84. The authority citation for part 1901 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

#### Subpart K—Certificates of Beneficial Ownership and Insured Notes

#### § 1901.501 [Amended]

■ 85. Amend § 1901.501 by removing "Farmers Home Administration (FmHA) or its successor Agency under Public Law 103-354" and adding "Rural Development" in its place.

■ 86. Revise § 1901.503(a)(2) through (a)(7), (a)(9), (a)(10), (a)(12), (a)(13), (a)(15) through (a)(17), (a)(19), and (b)(1) through (b)(6) to read as follows:

#### § 1901.503 Definitions.

(a) \* \* \*

(2) *Certificate*. A certificate of beneficial ownership issued by Rural Development under this subpart.

(3) *Director, Finance Office*. The Director or the Insured Loan Officer of the Finance Office of Rural Development.

(4) *Rural Development*. The United States acting through the Rural Housing Service, the Rural Utilities Service, or the Rural Business-Cooperative Service or their successor agencies.

(5) *Finance Office*. The office which maintains the Rural Development finance records. It is located at 1520 Market Street, St. Louis, Missouri 63103. (Phone: 314-425-4400)

(6) *Fixed period*. Any time interval (preceding an option period) during

which the insured holder is not entitled to require Rural Development to purchase the insured note, as specified in the insurance agreement.

(7) *Insurance agreement*. The entire contract evidencing and setting forth the terms and conditions of Rural Development insurance of the payment for the insured note. The insurance agreement with respect to any particular loan may be evidenced by Form RD 440-5, "Insurance Endorsement (Insured Loan)," RD 440-30, "Insurance Endorsement (Insure Loans)," or any other form or forms prescribed by the National Office and executed by an authorized official of Rural Development. It may include such provisions as, for example, an agreement of Rural Development to purchase or repurchase the loan, or to make supplementary payments from the insurance fund.

\* \* \* \* \*

(9) *Insured holder*. The current owner of an insured note other than Rural Development, according to the records of Rural Development as insurer of the note.

(10) *Insured note*. Any promissory note or bond evidencing an insured loan regardless of whether it is held by Rural Development in the insurance fund, by a private holder, or by Rural Development as trustee.

\* \* \* \* \*

(12) *National Office*. The Administrator or other authorized officer of Rural Development in Washington, DC.

(13) *Option period*. Any period during which the insured holder has the optional right to require Rural Development to purchase the insured note, as specified in the insurance agreement.

\* \* \* \* \*

(15) *Private buyer*. A buyer of an insured note other than Rural Development.

(16) *Private holder*. An insured holder other than Rural Development.

(17) *Repurchase agreement*. A provision in the insurance agreement obligating Rural Development to buy the insured note at the option of the holders.

\* \* \* \* \*

(19) *State Director*. The State Director of Rural Development for the State in which is located the real estate improved, purchased, or refinanced with the loan evidenced by the insured note.

(b) \* \* \*

(1) *Reserve bank*. The Federal Reserve Bank of New York (and any other Federal Reserve Bank which agrees to

issue securities in book-entry form) as fiscal agent of the United States acting on behalf of Rural Development and, when indicated, acting in its individual capacity.

(2) *Rural Development security*. A certificate representing beneficial ownership of notes, bonds, debentures, or other similar obligations held by Rural Development under the Consolidated Farm and Rural Development Act and title V of the Housing Act of 1949, issued in the form of a definitive Rural Development security or a book-entry Rural Development security.

(3) *Definitive Rural Development security*. A Rural Development security in engraved on printed form.

(4) *Book-entry Rural Development security*. A Rural Development security in the form of an entry made as prescribed in this subpart on the records of a Reserve bank.

(5) *Pledge*. A pledge of, or any other security interest in, Rural Development securities as collateral for loans or advances, or to secure deposits of public moneys or the performance of an obligation.

(6) *Date of call*. The date fixed in the official notice of call published in the **Federal Register** on which Rural Development will make payment of the security before maturity in accordance with its terms.

\* \* \* \* \*

#### § 1901.504 [Amended]

■ 87. Amend § 1901.504 by removing "FmHA or its successor Agency under Public Law 103-354 financing" and adding "Rural Development financing" in its place and by removing "FmHA or its successor Agency under Public Law 103-354's fiscal agents" and adding "Rural Development's fiscal agents" in its place.

#### § 1901.505 [Amended]

■ 88. Amend § 1901.505 section heading and paragraphs (a)(1), (a)(2), and (b) by removing "FmHA or its successor Agency under Public Law 103-354" wherever it occurs and adding "Rural Development" in its place.

#### § 1901.506 [Amended]

■ 89. Amend § 1901.506 by:

■ a. Removing "FmHA or its successor Agency under Public Law 103-354" each time it appears and adding "Rural Development" in the following places:

- i. The section heading;
- ii. Paragraphs (a)(1), (a)(2), (a)(3); (b)(2), (b)(3), (b)(4), (b)(5);
- iii. Paragraphs (b)(1) introductory text, (c)(1)(i), (c)(1)(iv), (c)(2), (c)(3), (c)(4), (c)(5);

- v. Paragraphs (d) paragraph heading, (d)(1), (d)(2);
  - vi. Paragraph (e) paragraph heading and text;
  - vii. Paragraph (f)(1);
  - viii. Paragraph (g) paragraph heading and text;
  - ix. Paragraph (h)(1); and
  - b. In paragraph (f)(2), removing “the Farmers Homes Administration or its successor agency under Public Law 103–354” and “Farmers Homes Administration or its successor agency under Public Law 103–354” and adding “Rural Development” in their place.
- 90. Amend § 1901.507 by:
- a. Revising the section heading to read as set forth below;
  - b. In paragraphs (b)(1) and (b)(3), removing “FmHA or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place;
  - c. In paragraph (c)(1), removing “FmHA or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place;
  - d. In paragraph (d)(1), removing “FmHA or its successor Agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;
  - e. Removing in paragraph (d)(2) “Farmers Home Administration or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place;
  - f. In paragraph (d)(3), removing “FmHA or its successor Agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place; and
  - g. Revising paragraph (e) to read as follows:

**§ 1901.507 Certificates of beneficial ownership by the Rural Development Finance Office.**

\* \* \* \* \*

(e) *Assignments.* Assignments of certificates should be executed by the owner or the owner’s authorized representative in the presence of an officer authorized to certify assignments. Registered certificates may be assigned to a specified transferee or to Rural Development for redemption or for exchange for other certificates offered at maturity. Assignments to “United States, Rural Development,” “Farmers Home Administration for Transfer,” or “Rural Development for Exchange” will not be accepted unless supplemented by specific instructions by or in behalf of the owner. If an alteration or erasure has been made in an assignment, a new assignment from the assignor should be obtained. Otherwise, an affidavit or explanation

by the person responsible for the alteration or erasure should be submitted for consideration.

\* \* \* \* \*

**§ 1901.508 [Amended]**

- 91. Amend § 1901.508 by:
  - a. In the introductory text and in paragraphs (a)(1) through (a)(4), removing “FmHA or its successor Agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;
  - b. In paragraph (b)(1)(i), removing “Form FmHA or its successor Agency under Public Law 103–354” and adding “Form RD” in its place;
  - c. In paragraph (b)(2), removing “FmHA or its successor Agency under Public Law 103–354 is requested” and adding “Rural Development is requested” in its place and removing “Form FmHA or its successor Agency under Public Law 103–354” and adding “Form RD” in its place;
  - d. In paragraph (b)(3), removing “Form FmHA or its successor Agency under Public Law 103–354” and adding “Form RD” in its place and removing “made to FmHA or its successor Agency under Public Law 103–354” and adding “made to Rural Development” in its place;
  - e. In paragraph (b)(4):
    - i. Removing “Form FmHA or its successor Agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;
    - ii. Removing “records of FmHA or its successor Agency under Public Law 103–354” and adding “records of Rural Development” in its place; and
    - iii. Removing “by FmHA or its successor Agency under Public Law 103–354” and adding “by Rural Development” in its place;
  - f. In paragraph (b)(5):
    - i. Removing “by FmHA or its successor Agency under Public Law 103–354” wherever it occurs and adding “by Rural Development” in its place;
    - ii. Removing “Form FmHA or its successor Agency under Public Law 103–354” and adding “Form RD” in its place; and
    - iii. Removing “However, FmHA or its successor Agency under Public Law 103–354” and adding “However, Rural Development” in its place; and
    - g. In the heading to paragraph (c) and in paragraphs (c)(1) introductory text, (c)(2), and (d), removing “FmHA or its successor Agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

**§ 1901.509 [Amended]**

- 92. Amend § 1901.509 by:
  - a. In paragraph (a), removing “FmHA or its successor Agency under Public

Law 103–354’s” wherever it occurs and adding “Rural Development’s” in its place;

- b. In paragraphs (b) introductory text, (b)(1) introductory text, and (b)(1)(iii), removing “FmHA or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place;
- c. In paragraph (b)(5):
  - i. Removing “and FmHA or its successor Agency under Public Law 103–354” and adding “and Rural Development” in its place;
  - ii. Removing “to FmHA or its successor Agency under Public Law 103–354” and adding “to Rural Development” in its place; and
  - iii. Removing “by FmHA or its successor Agency under Public Law 103–354” and adding “by Rural Development” in its place; and
- d. In paragraph (b)(6), removing “the Farmers Home Administration or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place; and
- e. In paragraph (d), removing “FmHA or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place.

**PART 1902—SUPERVISED BANK ACCOUNTS**

- 93. The authority citation for part 1902 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 7 U.S.C. 6991, *et seq.*; 42 U.S.C. 1480; Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

**Subpart A—Supervised Bank Accounts of Loan, Grant, and Other Funds**

**§ 1902.1 [Amended]**

- 94. Amend § 1902.1 introductory text by adding at the end of the section “This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.”

**§ 1902.4 [Amended]**

- 95. Amend § 1902.4 by:
  - a. In paragraph (a)(1), removing “FmHA or its successor agency under Public Law 103–354” and adding “government” in its place; and
  - b. In paragraph (b)(2):
    - i. Removing “the FmHA or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place;
    - ii. Removing “FmHA or its successor Agency under Public Law 103–354 will” and adding “Rural Development will” in its place; and
    - iii. Removing “Form FmHA or its successor Agency under Public Law 103–354” and adding “Form RD” in its place.

**§ 1902.9 [Amended]**

■ 96. Amend § 1902.9 in the heading of paragraph (a) by removing “FmHA or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1902.10 [Amended]**

■ 97. Amend § 1902.10 by:

- a. In paragraph (b), removing “FmHA or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place; and
- b. In paragraph (c), removing “Form FmHA or its successor Agency under Public Law 103–354” and adding “Form RD” in its place.

**§ 1902.15 [Amended]**

■ 98. Amend § 1902.15 by:

- a. In the introductory text:
  - i. Removing “When FmHA or its successor Agency under Public Law 103–354” and adding “When Rural Development” in its place;
  - ii. Removing “Form FmHA or its successor Agency under Public Law 103–354” and adding “Form RD” in its place; and
  - iii. Removing “FmHA or its successor Agency under Public Law 103–354’s” and adding “Rural Development’s” in its place.
- b. In paragraphs (a) and (c)(1)(i) introductory text, removing “FmHA or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place;
- c. In paragraph(c)(1)(i)(B), removing “FmHA or its successor Agency under Public Law 103–354’s” and adding “Rural Development’s” in their place;
- d. In paragraph (c)(1)(i)(C), removing “FmHA or its successor Agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;
- e. In paragraph (c)(1)(ii):
  - i. Removing “FmHA or its successor Agency under Public Law 103–354 indebtedness” and adding “Rural Development indebtedness” in its place;
  - ii. Removing “FmHA or its successor Agency under Public Law 103–354 borrower” and adding “Rural Development borrower” in its place; and
  - iii. Removing “the FmHA or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place; and
- f. In paragraphs (c)(1)(iii) and (c)(2)(i), removing “FmHA or its successor Agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1902.16 [Amended]**

■ 99. Amend § 1902.16 by:

- a. In paragraph (c), removing “FmHA or its successor agency under Public Law 103–354s” and adding “Rural Development” in its place; and
- b. In paragraph (d) by removing “of FmHA or its successor agency under Public Law 103–354’s” and adding “due to Rural Development” in its place.

**PART 1910—GENERAL**

■ 100. The authority citation for part 1910 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

**Subpart B—Credit Reports**

■ 100. Section 1910.51 is revised to read as follows:

**§ 1910.51 Purpose.**

This subpart prescribes the policies and procedures of Rural Development for individual and joint type credit reports. Credit reports will be ordered to determine the eligibility of applicants requesting Rural Development loans. A nonrefundable fee will be charged the applicant. This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

**Subpart C—Commercial Credit Reports**

■ 101. Revise the first sentence of § 1910.101 to read as follows:

**§ 1910.101 Preface.**

This subpart (§§ 1910.101 through 1910.150) describes the procedure to be used by Rural Development in obtaining commercial credit reports. \* \* \*

**PART 1924—CONSTRUCTION AND REPAIR**

■ 102. The authority citation for part 1924 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

**Subpart A—Planning and Performing Construction and Other Development****§ 1924.1 [Amended]**

■ 103. Amend § 1924.1 by removing “Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “Agency” in its place.

**§§ 1924.3, 1924.4, 1924.5, 1924.6, 1924.8, 1924.9, 1924.10, and 1924.13 [Amended]**

■ 102. Remove “FmHA or its successor agency under Public Law 103–354” wherever it occurs and add “Agency” in its place in the following places:

- a. Section 1924.3;
- b. Section 1924.4(d), (f), and (p);

■ c. Section 1924.5(d)(1) introductory text wherever it occurs, (d)(1)(iv), (d)(1)(v), (f)(1)(i), (f)(1)(iii)(C)(4), (f)(2)(iii), (f)(2)(xii) wherever it occurs, (g)(3), and (i)(4);

■ d. Section 1924.6(a)(6), (a)(8), (a)(10)(ii) wherever it occurs, and (a)(11)(iv);

■ e. Section 1924.8(e);

■ f. Section 1924.9(b)(7);

■ g. Section 1924.10(c)(1) wherever it occurs; and

■ h. Section 1924.13(a) introductory text, (a)(1), (a)(3), (a)(5)(i)(B) wherever it occurs, (a)(5)(ii)(C), (a)(5)(vi), (b)(2)(v), (e)(1) introductory text wherever it occurs, (e)(1)(iii)(B)(2), (e)(2)(i)(B), (e)(2)(ii)(A), and (e)(2)(vii).

**§§ 1924.5, 1924.6, 1924.9, 1924.10, 1924.11, 1924.12, and 1924.13 [Amended]**

■ 103. Remove “FmHA or its successor agency under Public Law 103–354” wherever it occurs and add “RD” in its place in the following places:

■ a. Section 1924.5(b) wherever it occurs, (f)(1)(iii)(F), (f)(2)(i), (g)(1) introductory text, and (g)(2);

■ b. Section 1924.6(a)(10)(iv) wherever it occurs, (a)(11)(iii), (a)(12)(ii), (a)(12)(iii) wherever it occurs, (a)(12)(v)(A), (a)(12)(vi)(C)(2)(i), (a)(12)(vi)(C)(2)(ii), (b)(3)(i) wherever it occurs, (b)(3)(ii)(C), and (b)(3)(ii)(G);

■ c. Section 1924.9(c) wherever it occurs;

■ d. Section 1924.10(a)(4), (c)(2)(i), and (c)(2)(ii);

■ e. Section 1924.11(c);

■ f. Section 1924.12(a), (d)(1), and (d)(2); and

■ g. Section 1924.13(e)(1)(ii) introductory text wherever it occurs and (e)(2)(x).

**§§ 1924.4, 1924.5, 1924.6, 1924.9, and 1924.13 [Amended]**

■ 104. Remove “FmHA or its successor agency under Public Law 103–354” wherever it occurs and add “the Agency” in its place in the following places:

■ a. Section 1924.4(h)(1), (h)(8), and (n);

■ b. Section 1924.5(d)(1)(i)(E)(1), (f)(1)(ii), (f)(1)(iii)(C), (f)(2) introductory text, (f)(2)(vii), and (f)(2)(viii);

■ c. Section 1924.6(a)(2)(vi), (a)(3)(iii)(B), (a)(3)(iv)(D), (a)(3)(iv)(F), (a)(11)(iv) wherever it occurs, (a)(12)(v)(C) wherever it occurs, (a)(12)(vi)(C)(1)(ii), and (b)(3)(ii)(F);

■ d. Section 1924.9(d) and (e); and

■ e. Section 1924.13(a)(5)(i)(F), (a)(5)(iii)(C), (b)(2) wherever it occurs, (e)(1)(i)(D), (e)(1)(i)(E), (e)(1)(iii)(B)(3), (e)(1)(vi)(A) wherever it occurs, (e)(1)(vii)(A)(4), (e)(1)(vii)(B)(3), (e)(2)(i)(D), (e)(2)(ii)(C), (e)(2)(iii)(C), (e)(2)(ix)(A) wherever it occurs, and (e)(2)(ix)(B).



**§ 1924.5 [Amended]**

- 105. Amend § 1924.5 by:
  - a. In paragraph (d)(1)(ii), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;
  - b. In paragraph (f) introductory text, removing “FmHA or its successor agency under Public Law 103–354’s” and adding “the Agency’s” in its place;
  - c. In paragraph (f)(1)(iii), removing “FmHA or its successor agency under Public Law 103–354” and adding “The Agency” in its place;
  - d. In paragraph (f)(2)(iii):
    - i. Removing “FmHA or its successor agency under Public Law 103–354 for” and adding “Agency for” in its place;
    - ii. Removing “that FmHA or its successor agency under Public Law 103–354 will” and adding “the Agency will” in its place; and
    - iii. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;
  - e. In paragraph (h) introductory text:
    - i. Removing “of FmHA or its successor agency under Public Law 103–354” and adding “of the Agency” in its place; and
    - ii. Removing “FmHA or its successor agency under Public Law 103–354 forms” and adding “RD forms” in its place; and
    - f. In paragraph (i)(5), removing “FmHA or its successor agency under Public Law 103–354” and adding “The Agency” in its place.

**§ 1924.6 [Amended]**

- 106. Amend § 1924.6 by:
  - a. In paragraph (a)(1), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “(including FmHA or its successor agency under Public Law 103–354)” and adding “(including the Agency)” in its place;
  - b. In paragraph (a)(3)(ii), removing “(including FmHA or its successor agency under Public Law 103–354)” and adding “(including the Agency)” in its place and removing “FmHA or its successor agency under Public Law 103–354 will be” and adding “The Agency will be” in its place;
  - c. In paragraph (a)(3)(iii)(A):
    - i. Removing “FmHA or its successor agency under Public Law 103–354 prior” and adding “the Agency prior” in its place;
    - ii. Removing “the owner and FmHA or its successor agency under Public Law 103–354” and adding “the owner and the Agency” in its place;
    - iii. Removing “by FmHA or its successor agency under Public Law

103–354” and adding “by the Agency” in its place; and

- iv. Removing “all FmHA or its successor agency under Public Law 103–354” and adding “all Agency” in its place.
- d. In paragraph (a)(11)(i), removing “FmHA or its successor agency under Public Law 103–354 employee” and adding “Agency employee” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- e. In paragraph (a)(12)(v)(B), removing “provide FmHA or its successor agency under Public Law 103–354” and adding “provide the Agency” in its place and removing “FmHA or its successor agency under Public Law 103–354 official” wherever it occurs and adding “Agency official” in its place;
- f. In paragraph (a)(12)(vi)(B):
  - i. Removing “FmHA or its successor agency under Public Law 103–354 loan” and adding “Agency loan” in its place;
  - ii. Removing “by FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “by the Agency” in its place;
  - iii. Removing “of FmHA or its successor agency under Public Law 103–354” and adding “of the Agency” in its place; and
  - iv. Removing “the owner and FmHA or its successor agency under Public Law 103–354” and adding “the owner and the Agency” in its place; and
  - g. In paragraph (a)(12)(vi)(C) introductory text:
    - i. Removing “the FmHA or its successor agency under Public Law 103–354 loan” and adding “Agency loan” in its place;
    - ii. Removing “FmHA or its successor agency under Public Law 103–354 will” and adding “the Agency will” in its place; and
    - iii. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place.

**§ 1924.9 [Amended]**

- 107. Amend § 1924.9 by:
  - a. In paragraph (a):
    - i. Removing “Rural Development office” and adding “Agency office” in its place;
    - ii. Removing “RHS or its successor agency under Public Law 103–354 inspections” wherever it occurs and adding “Agency inspections” in its place; and
    - iii. Removing “RHS or its successor agency under Public Law 103–354 has” and adding “the Agency has” in its place; and
  - b. In paragraph (b)(2), removing “the FmHA or its successor agency under

Public Law 103–354” and adding “Agency” in its place.

**§ 1924.10 [Amended]**

- 108. Amend § 1924.10(a)(3) by removing “FmHA or its successor agency under Public Law 103–354’s security” and adding “the Agency’s security” in its place and removing “FmHA or its successor agency under Public Law 103–354 security” and adding “Agency security” in its place.

**§ 1924.12 [Amended]**

- 109. Amend § 1924.12 by:
  - a. In paragraph (b):
    - i. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
    - ii. Removing “the owner and FmHA or its successor agency under Public Law 103–354” and adding “the owner and the Agency” in its place; and
    - iii. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by the Agency” in its place;
  - b. In paragraph (c), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Agency office” in its place; and
  - c. In paragraph (d)(4), removing “notifies FmHA or its successor agency under Public Law 103–354” and adding “notifies the Agency” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place.

**§ 1924.13 [Amended]**

- 110. Amend § 1924.13 by:
  - a. In paragraph (a)(4)(iii), removing “The Farmers Home Administration or its successor agency under Public Law 103–354” and adding “The Agency” in its place and removing “FmHA or its successor agency under Public Law 103–354 Approval Official” and adding “Agency Approval Official” in its place;
  - b. In paragraph (e)(1)(ii)(F):
    - i. Removing “to FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “to the Agency” in its place;
    - ii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place; and
    - iii. Removing “FmHA or its successor agency under Public Law 103–354 regulations” and adding “Agency regulations” in its place;
  - c. In paragraph (e)(1)(ii)(G), removing “FmHA or its successor agency under Public Law 103–354 offices” and adding

“Agency offices” in its place, and removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ d. In paragraph (e)(1)(ii)(H), removing “The Farmers Home Administration or its successor agency under Public Law 103–354” and adding “The Agency” in its place and removing “FmHA or its successor agency under Public Law 103–354 Official” and adding “Agency Official” in its place;

■ e. In paragraph (e)(1)(iv):

■ i. Removing “FmHA or its successor agency under Public Law 103–354 with” and adding “the Agency with” in its place;

■ ii. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 offices” and adding “Agency offices” in its place; and

■ iv. Removing “FmHA or its successor agency under Public Law 103–354 personnel” and adding “Agency personnel” in its place;

■ f. In paragraph (e)(1)(v) introductory text:

■ i. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354 office” wherever it occurs and adding “Agency office” in its place;

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 will” and adding “the Agency will” in its place;

■ iv. Removing “FmHA or its successor agency under Public Law 103–354 contractor” and adding “Agency contractor” in its place;

■ v. Removing “FmHA or its successor agency under Public Law 103–354 contracts” and adding “Agency contracts” in its place; and

■ vi. Removing “FmHA or its successor agency under Public Law 103–354 personnel” and adding “Agency personnel” in its place;

■ g. In paragraph (e)(1)(v)(A), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “to FmHA or its successor agency under Public Law 103–354” and adding “to the Agency” in its place;

■ h. In paragraph (e)(1)(v)(B):

■ i. Removing “the owner and FmHA or its successor agency under Public Law 103–354” and adding “the owner and the Agency” in its place;

■ ii. Removing “Form FmHA or its successor agency under Public Law

103–354” and adding “Form RD” in its place;

■ iii. Removing “prior to FmHA or its successor agency under Public Law 103–354” and adding “prior to the Agency” in its place; and

■ iv. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by the Agency” in its place;

■ i. In paragraph (e)(1)(v)(C):

■ i. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ ii. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by the Agency” in its place; and

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Agency office” in its place;

■ j. In paragraph (e)(1)(v)(D), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 regulations” and adding “Agency regulations” in its place;

■ k. In paragraph (e)(1)(v)(E):

■ i. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by the Agency” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354 reserves” and adding “The Agency reserves” in its place;

■ iii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place; and

■ iv. Removing “to FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “to the Agency” in its place;

■ l. In paragraph (e)(1)(v)(G):

■ i. Removing “Forms FmHA or its successor agency under Public Law 103–354” and adding “Forms RD” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354 1944–31” and adding “RD 1944–31” in its place;

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place; and

■ iv. Removing “FmHA or its successor agency under Public Law 103–354 office” wherever it occurs and adding “Agency office” in its place;

■ m. In paragraph (e)(1)(v)(I):

■ i. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354

Instruction” and adding “RD Instruction” in its place; and

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Agency office” in its place;

■ n. In paragraph (e)(1)(vi) introductory text, removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 as shown” and adding “the Agency as shown” in its place;

■ o. In paragraph (e)(2)(i)(G), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “by FmHA or its successor agency under Public Law 103–354” and adding “by the Agency” in its place;

■ p. In paragraph (e)(2)(i)(H), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “to FmHA or its successor agency under Public Law 103–354” and adding “to the Agency” in its place;

■ q. In paragraph (e)(2)(viii) introductory text:

■ i. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Agency office” in its place;

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 contractor” and adding “Agency contractor” in its place; and

■ iv. Removing “FmHA or its successor agency under Public Law 103–354 contracts” and adding “Agency contracts” in its place;

■ r. In paragraph (e)(2)(viii)(A):

■ i. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354 regulations” and adding “Agency regulations” in its place;

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 reserves” and adding “The Agency reserves” in its place;

■ iv. Removing “to FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “to the Agency” in its place;

■ v. Removing “FmHA or its successor agency under Public Law 103–354” and adding “to the Agency” in its place;

■ vi. Removing “FmHA or its successor agency under Public Law 103–354” and adding “to the Agency” in its place;

■ vii. Removing “FmHA or its successor agency under Public Law 103–354” and adding “to the Agency” in its place;

office” and adding “Agency office” in its place; and

- vi. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by the Agency” in its place;
- s. In paragraph (e)(2)(viii)(B):
- i. Removing “FmHA or its successor agency under Public Law 103–354 must” and adding “the Agency must” in its place;
- ii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place; and
- iii. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by the Agency” in its place;
- t. In paragraph (e)(2)(viii)(D):
- i. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- ii. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place; and
- iii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Agency office” in its place; and
- u. In paragraph (e)(2)(ix):
- i. Removing “FmHA or its successor agency under Public Law 103–354 District” and adding “Agency District” in its place;
- ii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- iii. Removing “to FmHA or its successor agency under Public Law 103–354” and adding “to the Agency” in its place;
- iv. Removing “FmHA or its successor agency under Public Law 103–354 Representative” and adding “Agency Representative” in its place; and
- v. Removing “FmHA or its successor agency under Public Law 103–354 does not” and adding “the Agency does not” in its place.

#### **Exhibit B to Subpart A [Amended]**

- 111. Amend Exhibit B to Subpart A of Part 1924 by:
  - a. In the introductory text:
    - i. Removing “of FmHA or its successor agency under Public Law 103–354” and adding “of the Agency” in its place;
    - ii. Removing “Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “Agency” in its place; and
    - iii. Removing “an FmHA or its successor agency under Public Law 103–354” and adding “an Agency” in its place;

- b. In paragraph I.B, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- c. In paragraph III.B:
  - i. Removing “an FmHA or its successor agency under Public Law 103–354” and adding “an Agency” in its place;
  - ii. Removing “local FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “local Agency” in its place; and
  - iii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- d. In paragraph IV, removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place;
- e. In paragraph V introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- f. In paragraph V.D introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place;
- g. In paragraph V.E, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- h. In paragraph V.H, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- i. In paragraph V.J, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- j. In paragraph VI.A introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- k. In paragraph VI.A.3, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- l. In paragraph VII.C introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- m. In paragraph IX, removing “FmHA or its successor agency under Public Law 103–354 will” and adding “The Agency will” in its place and removing “of the FmHA or its successor agency under Public Law 103–354” and adding “of the Agency” in its place;
- n. In paragraph X.B, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- o. In paragraph X.C, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- p. In Attachment 1 to Exhibit B by:

- i. In the introductory text, removing “Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “Agency” in its place and removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- ii. In paragraph A.10, removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place; and
- iii. In paragraph B.4(c), removing “FmHA or its successor agency under Public Law 103–354” and adding “U.S. Department of Agriculture,” in its place;
- q. In Attachment 2 to Exhibit B by:
  - i. In the second introductory paragraph, removing “Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “Agency” in its place;
  - ii. In paragraph 2, removing “by FmHA or its successor agency under Public Law 103–354” and adding “by the Agency” in its place;
  - iii. In paragraph 3, removing “local FmHA or its successor agency under Public Law 103–354” and adding “local Agency” in its place;
  - iv. In paragraph 3, removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place;
  - v. In paragraph 3, removing “FmHA or its successor agency under Public Law 103–354 Thermal” and adding “Agency Thermal” in its place;
  - vi. In paragraph 6 and the second undesignated concluding paragraph, removing “FmHA or its successor agency under Public Law 103–354 personnel” and adding “RD personnel” in its place;
  - vii. In paragraph 6, removing “FmHA or its successor agency under Public Law 103–354 State” and adding “Agency State” in its place; and
  - viii. In paragraph 6, removing “FmHA or its successor agency under Public Law 103–354 inspection” and adding “RD inspection” in its place; and
- r. In Attachment 5 to Exhibit B by removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Agency” in its place.

#### **Exhibit C to Subpart A [Amended]**

- 112. Amend Exhibit C to Subpart A of Part 1924 by:
  - a. In paragraphs II.A introductory text and V.B introductory text, removing “any FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “any Agency” in its place;
  - b. In paragraphs IV introductory text and IV.A introductory text, removing

“Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place; and

■ c. In paragraph IV.A.1, removing “FmHA or its successor agency under Public Law 103–354 form” and adding “RD form” in its place.

#### **Exhibit D to Subpart A [Amended]**

■ 113. Amend Exhibit D to Subpart A of Part 1924 by removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Agency” in its place in the following places:

- a. Paragraph IV.A;
- b. Paragraph IV.C.1.a;
- c. Paragraph IV.C.1.b;
- d. Paragraph IV.C.2.b; and
- e. Paragraph V.A.

#### **Exhibit H to Subpart A [Amended]**

■ 114. Amend Exhibit H to Subpart A of Part 1924 by:

- a. In paragraph II, removing “Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- b. In paragraph IV.B, removing “FmHA or its successor agency under Public Law 103–354 requires” and adding “the Agency requires” in its place and removing “FmHA or its successor agency under Public Law 103–354 County” and adding “Agency County” in its place;
- c. In paragraph IV.C, removing “FmHA or its successor agency under Public Law 103–354 requires” and adding “the Agency requires” in its place and removing “FmHA or its successor agency under Public Law 103–354 County” and adding “Agency County” in its place;
- d. In paragraph IV.D, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Agency” in its place; and
- e. In paragraph IV.E, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place.

#### **Exhibit I to Subpart A [Amended]**

■ 115. Amend Exhibit I to Subpart A of Part 1924 by:

- a. Removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “the Agency” in its place in the following places:
  - i. Paragraph 300–3; and
  - ii. Paragraph 302–2.5; and
- b. Removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Agency” in its place in the following places:

- i. Paragraph 302–2.3;
- ii. Paragraph 303–1.

#### **Exhibit J to Subpart A [Amended]**

■ 116. Amend Exhibit J to Subpart A of Part 1924, Part A by:

- a. In Section I:
  - i. Removing “FmHA or its successor agency under Public Law 103–354 field” and adding “Agency field” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 housing” and adding “Agency housing” in its place;
  - iii. Removing “FmHA or its successor agency under Public Law 103–354 may” and adding “The Agency may” in its place; and
  - iv. Removing “FmHA or its successor agency under Public Law 103–354 will” and adding “The Agency will” in its place;
- b. In Section II introductory text by:
  - i. Removing “FmHA or its successor agency under Public Law 103–354 has” and adding “The Agency has” in its place;
  - ii. Removing “to FmHA or its successor agency under Public Law 103–354” and adding “to the Agency” in its place; and
  - iii. Removing “of FmHA or its successor agency under Public Law 103–354” and adding “of Agency” in its place;
- c. In Section II.B:
  - i. Removing “FmHA or its successor agency under Public Law 103–354 field” and adding “Agency field” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 loan” and adding “Agency loan” in its place;
  - iii. Removing “FmHA or its successor agency under Public Law 103–354/MPS” and adding “Agency/MPS” in its place; and
  - iv. Removing “FmHA or its successor agency under Public Law 103–354 in that” and adding “the Agency in that” in its place;
- d. In Section III:
  - i. In the definition of ‘Manufactured Home’ removing “FmHA or its successor agency under Public Law 103–354’s” and adding “the Agency’s” in its place; and
  - ii. In the definition of ‘Permanent Perimeter Enclosure’ removing “FmHA or its successor agency under Public Law 103–354 adopted” and adding “Agency adopted” in its place;
  - e. In Section IV, removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place;
  - f. In Section V:
    - i. In the introductory text, removing “by FmHA or its successor agency

under Public Law 103–354” and adding “by the Agency” in its place;

- ii. In Section V.2, removing “by FmHA or its successor agency under Public Law 103–354” and adding “by the Agency” in its place and removing “to FmHA or its successor agency under Public Law 103–354” and adding “to the Agency” in its place; and
- iii. In Section V.2.B introductory text, removing “by FmHA or its successor agency under Public Law 103–354” and adding “by the Agency” in its place and removing “FmHA or its successor agency under Public Law 103–354 regulations” and adding “Agency regulations” in its place;

#### **Exhibit J to Subpart A [Amended]**

■ 117. Amend Exhibit J to Subpart A of Part 1924, Part B by:

- a. In Section I.C removing “FmHA or its successor agency under Public Law 103–354’s” and adding “the Agency’s” in its place;
- b. In Section I.I, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- c. In Section II.A introductory text, removing “FmHA or its successor agency under Public Law 103–354/MPS” and adding “Agency/MPS” in its place and removing “to FmHA or its successor agency under Public Law 103–354” and adding “to the Agency” in its place;
- d. In Section II.A.1, removing “FmHA or its successor agency under Public Law 103–354/MPS” and adding “Agency/MPS” in its place and removing “to FmHA or its successor agency under Public Law 103–354” and adding “to the Agency” in its place;
- e. In Section II.A.2, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- f. In Section II.A.4, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- g. In Section II.A.6, removing “FmHA or its successor agency under Public Law 103–354 adopted” and adding “Agency adopted” in its place and removing “to FmHA or its successor agency under Public Law 103–354” and adding “to the Agency” in its place;
- h. In Section II.A.8, removing “FmHA or its successor agency under Public Law 103–354’s” and adding “the Agency’s” in its place;
- i. In Section II.C.1, removing “FmHA or its successor agency under Public Law 103–354/MPS” wherever it occurs and adding “Agency/MPS” in its place;
- j. In Section II.C.2, removing “FmHA or its successor agency under Public

Law 103–354/MPS” and adding “Agency/MPS” in its place;

■ k. In Section III.A, removing “FmHA or its successor agency under Public Law 103–354/MPS” and adding “Agency/MPS” in its place;

■ l. In Section III.C, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;

■ m. In Section IV.A.1, removing “FmHA or its successor agency under Public Law 103–354/MPS” and adding “Agency/MPS” in its place; and

■ n. In Section IV.C.2, removing “FmHA or its successor agency under Public Law 103–354/MPS” and adding “Agency/MPS” in its place and removing “by FmHA or its successor agency under Public Law 103–354” and adding “by the Agency” in its place;

#### **Exhibit J to Subpart A [Amended]**

■ 118. Amend Exhibit J to Subpart A of Part 1924, Part C by:

■ a. In Section I introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place;

■ b. In Section I.B, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Agency” in its place;

■ c. In Section I.C:

■ i. Removing “FmHA or its successor agency under Public Law 103–354 County” and adding “Agency County” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354/MPS” and adding “Agency/MPS” in its place; and

■ iii. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by the Agency” in its place; and

■ d. In Section V.A, removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place.

#### **Exhibit J to Subpart A [Amended]**

■ 119. Amend Exhibit J to Subpart A of Part 1924, Part D, Inspection of Development Works, Section II.D by removing “FmHA or its successor agency under Public Law 103–354’s” and adding “the Agency’s” in its place.

#### **Exhibit K to Subpart A [Amended]**

■ 120. Amend Exhibit K to Subpart A of Part 1924 by:

■ a. In Section I, removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place;

■ b. In Section II, removing “FmHA or its successor agency under Public Law 103–354’s” wherever it occurs and

adding “the Agency’s” in its place and removing “between FmHA or its successor agency under Public Law 103–354” and adding “between the Agency” in its place; and

■ c. In Section III, removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place.

#### **Exhibit L to Subpart A [Amended]**

■ 121. Amend Exhibit L to Subpart A of Part 1924 by:

■ a. In Section I introductory text, removing “Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “the Agency” in its place;

■ b. In Section I.A, removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place;

■ c. In Section I.B, removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place;

■ d. In Section I.C, removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place;

■ e. In Section II.B, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “the Agency” in its place;

■ f. In Section III.E, removing “if FmHA or its successor agency under Public Law 103–354” and adding “if the Agency” in its place and removing “FmHA or its successor agency under Public Law 103–354 inspections” wherever it occurs and adding “Agency inspections” in its place;

■ g. In Section IV.A(6), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;

■ h. In Section IV.B(1), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;

■ i. In Section IV.B(2), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place; and

■ j. In Attachment 1, removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place.

#### **Subpart C—Planning and Performing Site Development Work**

##### **§§ 1924.103 and 1924.119 [Amended]**

■ 122. Amend §§ 1924.103 and 1924.119 by removing “FmHA” and adding “RD” in its place and by removing “(available in any RHS field office)” wherever it occurs.

#### **Subpart F—Complaints and Compensation for Construction Defects**

##### **§ 1924.251 [Amended]**

■ 123. Amend § 1924.251 by removing “Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

##### **§§ 1924.252, 1924.253, 1924.258, 1924.260, 1924.261, 1924.262, 1924.265, 1924.266, 1924.274, and 1924.276 [Amended]**

■ 124. Remove “FmHA or its successor agency under Public Law 103–354” wherever it occurs and add “Rural Development” in its place in the following places:

- a. Section 1924.252;
- b. Section 1924.253;
- c. Section 1924.258;
- d. Section 1924.260;
- e. Section 1924.261;
- f. Section 1924.262;
- g. Section 1924.265;
- h. Section 1924.266;
- i. Section 1924.274; and
- j. Section 1924.276.

##### **§ 1924.259 [Amended]**

■ 125. Amend § 1924.259 by:

■ a. In paragraph (a), removing “a format specified by FmHA or its successor agency under Public Law 103–354 (available in any FmHA or its successor agency under Public Law 103–354 office)” and adding “a Rural Development approved format” in its place and removing “FmHA or its successor agency under Public Law 103–354 will” and adding “Rural Development will” in its place;

■ b. In paragraph (b), removing “FmHA or its successor agency under Public Law 103–354 using a format specified by FmHA or its successor agency under Public Law 103–354 (available in any FmHA or its successor agency under Public Law 103–354 office)” and adding “Rural Development using a Rural Development approved format” in its place;

■ c. In paragraphs (c), (d), and (e) introductory text, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;

■ d. In paragraph (e)(2) introductory text, removing “FmHA or its successor agency under Public Law 103–354’s findings” and adding “the findings” in its place; and

■ e. In paragraphs (e)(2)(i), (e)(2)(ii), (e)(3), and (e)(4), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

§ 1924.271 [Amended]

■ 126. Amend § 1924.271 by removing “to FmHA or its successor agency under Public Law 103–354” and adding “to Rural Development” in its place and by removing “(available in any FmHA or its successor agency under Public Law 103–354 office)”.

§ 1924.273 [Amended]

■ 127. Amend § 1924.273 by removing “(available in any FmHA or its successor agency under Public Law 103–354 office)”.

PART 1925—TAXES

■ 128. The authority citation for part 1925 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart C—Planning and Performing Site Development Work

§ 1925.2 [Amended]

■ 129. Amend § 1925.2 by removing “Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “Agency” in its place.

§ 1925.3 [Amended]

■ 130. Amend § 1925.3(c) by removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

§ 1925.4 [Amended]

■ 131. Amend § 1925.4 by:
■ a. In paragraph (a), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Agency” in its place; and
■ b. In paragraph (b), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

PART 1927—TITLE CLEARANCE AND LOAN CLOSING

■ 132. The authority citation for part 1927 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart B—Real Estate Title Clearance and Loan Closing

§ 1927.52 [Amended]

■ 133. Amend § 1927.52 by removing the definition of “FSA” and revising the definitions of “Agency”, “National Office”, “RHS”, and “State Office” to read as follows:

§ 1927.52 Definitions.

Agency. The Rural Housing Service (RHS) or its successor agency.

\* \* \* \* \*

National Office. The National Headquarters Office of RHS.

\* \* \* \* \*

RHS. The Rural Housing Service, an agency of the United States Department of Agriculture, or its successor agency.

\* \* \* \* \*

State Office. This term refers to the Rural Development State Director.

\* \* \* \* \*

PART 1940—GENERAL

■ 134. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart I—Truth in Lending-Real Estate Settlement Procedures

§ 1940.401 [Amended]

■ 135. Amend § 1940.401 by:
■ a. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place; and
■ b. In paragraph (d)(4)(iii), removing “by FmHA or its successor agency under Public Law 103–354 to the FmHA or its successor agency under Public Law 103–354 County Office” and adding “by Rural Development to the Rural Development County Office” in its place.

§ 1940.406 [Amended]

■ 136. Amend § 1940.406 by removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

§ 1940.551 [Amended]

■ 137. Amend § 1940.551 by:
■ a. In paragraph (a), removing “Administrator of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “Administrator for the Rural Business-Cooperative Service or the Administrator for the Rural Housing Service, as applicable,” in its place; and
■ b. In paragraph (c), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

§§ 1940.552, 1940.557, 1940.578, and 1940.585 [Amended]

■ 138. Amend §§ 1940.552(e), 1940.577(b)(2), 1940.578(k), and 1940.585(g) by removing “FmHA or its successor agency under Public Law

103–354” wherever it occurs and adding “Rural Development” in its place.

■ 139. Revise § 1940.560(b)(3) to read as follows:

§ 1940.560 Guaranteed Rural Rental Housing Program.

\* \* \* \* \*

(b) \* \* \*

(3) State’s percentage of National average cost per unit. The data source for the criterion specified in paragraph (b)(1) of this section is the most recent decennial Census of the United States (decennial Census). The data source for the criterion specified in paragraph (b)(2) of this section is 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data. The data source for the criterion specified in paragraph (b)(3) of this section is the cost per unit data using the applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act, which can be obtained from the Department of Housing and Urban Development. The percentage representing each criterion is multiplied by the weight assigned and totaled to arrive at a State factor.

State Factor = (criterion No. 1 × weight of 40%) + (criterion No. 1 × weight of 40%) + (criterion No. 1 × weight of 20%)

\* \* \* \* \*

■ 140. In § 1940.563, revise paragraph (b)(4) and add paragraph (b)(5) to read as follows:

§ 1940.563 Section 502 non-subsidized guaranteed Rural Housing (RH) loans.

\* \* \* \* \*

(b) \* \* \*

(4) State’s percentage of the national number of rural renter households paying more than 35 percent of income for rent. The data source for each criterion is specified in paragraph (b)(5) of this section. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF) as follows:

SF = (criterion 1 × weight of 30%) + (criterion 2 × weight of 10%) + (criterion 3 × weight of 30%) + (criterion 4 × weight of 30%)

(5) The data source for the criteria specified in paragraphs (b)(1) and (b)(2) of this section is the most recent decennial Census. The data source for the criteria specified in paragraph (b)(3) and (b)(4) of this section is 5-year income data from the American

Community Survey (ACS) or, if needed, other Census Bureau data.

\* \* \* \* \*

■ 141. In § 1940.564, revise paragraph (b)(4) and add paragraph (b)(5) to read as follows:

**§ 1940.564 Section 502 subsidized guaranteed Rural Housing loans.**

\* \* \* \* \*

(b) \* \* \*

(4) State's percentage of the national number of rural renter households paying more than 35 percent of income for rent. The data source for each criterion is specified in paragraph (b)(5) of this section. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF) as follows:

$$SF = (\text{criterion 1} \times \text{weight of 30\%}) + (\text{criterion 2} \times \text{weight of 10\%}) + (\text{criterion 3} \times \text{weight of 30\%}) + (\text{criterion 4} \times \text{weight of 30\%})$$

(5) The data source for the criteria specified in paragraphs (b)(1), (b)(2), and (b)(4) of this section is the most recent decennial Census. The data source for the criterion specified in paragraph (b)(3) of this section is 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data.

\* \* \* \* \*

■ 142. Revise § 1940.566(b)(2) to read as follows:

**§ 1940.566 Section 504 Housing Repair loans.**

\* \* \* \* \*

(b) \* \* \*

(2) State's percentage of the National number of rural households below 50 percent of area median income. The data source for the first criterion is the most recent decennial Census data. The data source for the second criterion is 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF).

$$SF = (\text{criterion No. 1} \times \text{weight of 50\%}) + (\text{criterion No. 2} \times \text{weight of 50\%})$$

\* \* \* \* \*

■ 143. Revise § 1940.567(b)(3) to read as follows:

**§ 1940.567 Section 504 Housing Repair grants.**

\* \* \* \* \*

(b) \* \* \*

(3) State's percentage of the National number of rural households below 50 percent of area median income. The data source for the first two of these criteria is the most recent decennial Census data. The data source for the third criterion is the 5-year data from the American Community Survey (ACS) or, if needed, other Census Bureau data. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF).

$$SF = (\text{criterion No. 1} \times \text{weight of 33 1/3\%}) + (\text{criterion No. 2} \times \text{weight of 33 1/3\%}) + (\text{criterion No. 3} \times \text{weight of 33 1/3\%})$$

\* \* \* \* \*

■ 144. Revise § 1940.575(b)(3) to read as follows:

**§ 1940.575 Section 515 Rural Rental Housing (RRH) loans.**

\* \* \* \* \*

(b) \* \* \*

(3) State's percentage of National rural families with incomes below the poverty level. The data source for the first two of these criterion is the most recent decennial Census data. The data source for the third criterion is the 5-year data from the American Community Survey (ACS) or, if needed, other Census Bureau data. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight assigned and summed to arrive at a State factor (SF).

$$SF = (\text{criterion No. 1} \times \text{weight of 33 1/3\%}) + (\text{criterion No. 2} \times \text{weight of 33 1/3\%}) + (\text{criterion No. 3} \times \text{weight of 33 1/3\%})$$

\* \* \* \* \*

■ 145. Revise § 1940.585(b)(2) to read as follows:

**§ 1940.585 Community Facility loans.**

\* \* \* \* \*

(b) \* \* \*

(2) The data source for the first criterion is the most recent decennial Census data. The data source for the second criterion is the 5-year data from the American Community Survey (ACS) or, if needed, other Census Bureau data. The data source for the third criterion is the most recent Bureau of Labor Statistics data. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed 0.05.

$$SF = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$$

\* \* \* \* \*

■ 146. Amend § 1940.591 by:

■ a. Revising paragraph (b)(2); and

■ b. In paragraph (g), removing "(available in any FmHA or its successor agency under Public Law 103-354 office)."

The revision reads as follows:

**§ 1940.591 Community Program Guaranteed loans.**

\* \* \* \* \*

(b) \* \* \*

(2) The data source for the first criterion is the most recent decennial Census data. The data source for the second criterion is the 5-year data from the American Community Survey (ACS) or, if needed, other Census Bureau data. The data source for the third criterion is the most recent Bureau of Labor Statistics data. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed 0.05.

$$SF = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$$

\* \* \* \* \*

■ 147. Revise § 1940.592(b)(2) to read as follows:

**§ 1940.592 Community facilities grants.**

\* \* \* \* \*

(b) \* \* \*

(2) The data source for the first criterion is the most recent decennial Census data. The data source for the second criterion is the 5-year data from the American Community Survey (ACS) or, if needed, other Census Bureau data. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

$$SF = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 50 \text{ percent})$$

\* \* \* \* \*

**Subpart T—System for Delivery of Certain Rural Development Programs**

**§ 1940.951 [Amended]**

■ 148. Amend § 1940.951 by:

■ a. In the introductory text, removing "Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354" and adding "Rural Development" in its place; and

■ b. In paragraph (d), removing "FmHA or its successor agency under Public

Law 103–354” and adding “Rural Development” in its place.

#### § 1940.953 [Amended]

- 149. Amend § 1940.953 by:
  - a. In the definition of ‘Administrator’, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Business—Cooperative Service, Rural Housing Service, or Rural Utilities Service” in its place; and
  - b. In the definition of ‘State Director’, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

#### §§ 1940.956, 1940.957, 1940.960, and 1940.969 [Amended]

- 150. Remove “FmHA or its successor agency under Public Law 103–354” wherever it occurs and add “Rural Development” in its place in the following places:
  - a. Section 1940.956;
  - b. Section 1940.957(d);
  - c. Section 1940.960(a); and
  - d. Section 1940.969.

#### § 1940.961 [Amended]

- 151. Amend § 1940.961 by:
  - a. In paragraph (a)(1), removing “FmHA Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 State” and adding “RD State” in its place;
  - b. In paragraph (a)(2), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and
  - c. In paragraph (d)(1), removing “FmHA Instruction” and adding “RD Instruction” in its place.

#### § 1940.965 [Amended]

- 152. Amend § 1940.965 by removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

#### § 1940.968 [Amended]

- 153. Amend § 1940.968 by:
  - a. In paragraph (a), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place;
  - b. In paragraphs (c) and (d), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - c. In paragraph (h)(4), removing “FmHA Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place;
  - d. In paragraph (i)(2)(vii), removing “FmHA or its successor agency under

Public Law 103–354” and adding “Rural Development” in its place;

- e. In paragraph (i)(3)(i), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;
- f. In paragraph (i)(3)(ii), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- g. In paragraph (i)(3)(iii), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;
- h. In paragraph (i)(3)(iv), removing “FmHA Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place;
- i. In paragraph (j)(2):
  - i. Removing “Exhibit A (available from any FmHA or its successor agency under Public Law 103–354 RD State Office), shall be attached to and become a permanent part of Form FmHA or its successor agency under Public Law 103–354 1940–A and the following paragraphs will appear in the comment section of that form:” and adding “Exhibit A of this subpart (available from any Rural Development State Office) shall be attached to and become a permanent part of Form RD 1940–1 and the following paragraphs will appear in the comment section of that form:” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 7 CFR part 1940” and adding “7 CFR part 1940” in its place; and
  - iii. Removing “approved by FmHA or its successor agency under Public Law 103–354” and adding “approved by Rural Development” in its place;
- j. In paragraph (j)(4), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 will retain” and adding “Rural Development will retain” in its place;
- k. In paragraph (j)(6), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place; and
- l. In paragraphs (j)(7) and (l), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

#### PART 1942—ASSOCIATIONS

- 154. The authority citation for part 1942 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

#### Subpart A—Community Facility Loan

##### § 1942.1 [Amended]

- 155. Amend § 1942.1 by:
  - a. In paragraph (b), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Agency’s” in its place;
  - b. In paragraph (c), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place; and
  - c. In paragraph (d), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Agency” in its place.

##### § 1942.2 [Amended]

- 156. Amend § 1942.2:
  - a. In paragraph (a)(1), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD’s” in its place;
  - b. In paragraph (a)(2)(iv), removing “by FmHA or its successor agency under Public Law 103–354” and adding “by RD” in its place;
  - c. In paragraph (a)(3), removing “FmHA or its successor agency under Public Law 103–354 funding” and adding “Agency funding” in its place and removing “FmHA or its successor agency under Public Law 103–354 will issue” and adding “the Agency will issue” in its place;
  - d. In paragraph (a)(4), removing “FmHA or its successor agency under Public Law 103–354” and “Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “Rural Development” in their place;
  - e. In paragraph (c)(3), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place; and
  - f. In paragraphs (d) and (e), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

##### § 1942.3 [Amended]

- 157. Amend § 1942.3 by:
  - a. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
  - b. Removing “422–10” and adding “442–10” in its place; and
  - c. Removing “by the FmHA or its successor agency under Public Law 103–354” and adding “by the RD” in its place.

##### § 1942.5 [Amended]

- 158. Amend § 1942.5 by:
  - a. In paragraph (a) introductory text, removing “Ordinarily FmHA or its



successor agency under Public Law 103–354” and adding “The Rural Development” in its place and removing “by the FmHA or its successor agency under Public Law 103–354” and adding “by the Rural Development” in its place;

■ b. In paragraph (a)(1)(i), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place and removing “(Public Resolution)” and adding “(Public Bodies)” in its place;

■ c. In paragraph (a)(1)(ii):

■ i. Removing “approved by FmHA or its successor agency under Public Law 103–354 by written” and adding “approved by written” in its place;

■ ii. Removing “approved by FmHA or its successor agency under Public Law 103–354 shall” and adding “approved by RD shall” in its place;

■ iii. Removing “If FmHA or its successor agency under Public Law 103–354 makes the loan” and adding “(insert agency name) makes the loan” in its place;

■ iv. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ v. Removing “submitted to FmHA or its successor agency under Public Law 103–354” and adding “submitted to RD” in its place; and

■ vi. Removing “FmHA or its successor agency under Public Law 103–354 reserves” and adding “Rural Development reserves” in its place;

■ d. In paragraphs (b)(1)(ii)(E) and (c)(2), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;

■ e. In paragraph (d) introductory text, removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;

■ f. In paragraphs (d)(1) and (d)(2), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ g. In paragraph (d)(3), removing “FmHA or its successor agency under Public Law 103–354 Field Office terminal” and adding “automated terminal” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ h. In paragraph (d)(5):

■ i. Removing “FmHA or its successor agency under Public Law 103–354

Field” and adding “Rural Development Field” in its place;

■ ii. Removing “the Legislative Affairs and Public Information Staff in the National Office” and adding “the Legislative and Public Affairs Staff in the Rural Development National Office” in its place; and

■ iii. Removing “FmHA Instruction” and adding “RD Instruction” in its place;

■ i. In paragraph (d)(6), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ j. In paragraph (d)(7) introductory text, removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 Field” in its place; and

■ k. In paragraph (d)(7)(iii), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

#### § 1942.6 [Amended]

■ 159. Amend § 1942.6 by removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

#### § 1942.8 [Amended]

■ 160. Amend § 1942.8:

■ a. In paragraph (d), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;

■ b. In paragraph (g), removing “review of FmHA or its successor agency under Public Law 103–354’s” and adding “review of Rural Developments’s” in its place; and

■ c. In paragraph (h), removing “FmHA or its successor agency under Public Law 103–354 personnel” and adding “Rural Development personnel” in its place and removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place.

#### § 1942.16 [Amended]

■ 161. Amend § 1942.16 introductory text by removing “FmHA Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place.

#### § 1942.17 [Amended]

■ 162. Amend § 1942.17 by:

■ a. Removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its

place wherever it occurs in the following places:

■ i. Paragraph (a);

■ ii. Paragraphs (b)(2)(i), (b)(3), and (b)(4);

■ iii. Paragraphs (c)(1), (c)(2) introductory text, and (c)(2)(iv) introductory text;

■ iv. Paragraphs (d)(1)(iv)(B), (d)(1)(iv)(G) introductory text, (d)(1)(iv)(G)(2)(ii), (d)(1)(v) introductory text, (d)(1)(v)(C), and (d)(1)(v)(D);

■ v. Paragraphs (e)(1) introductory text, (e)(1)(ii), and (e)(4);

■ vi. Paragraph (f)(6);

■ vii. Paragraph (f)(7) introductory text and (f)(7)(i)(D);

■ viii. Paragraph (g) introductory text;

■ ix. Paragraphs (h) introductory text, (h)(1)(ii)(B), (h)(2)(ii)(A)(2), (h)(2)(ii)(B), (h)(2)(iii) introductory text, (h)(2)(iii)(C), and (h)(3) introductory text;

■ x. Paragraphs (j)(3)(i)(A) through (D), (j)(3)(ii)(A), (j)(4) introductory text, (j)(4)(iii)(C), (j)(5), (j)(7), (j)(9), (j)(10)(ii), (j)(10)(iv), and (j)(11);

■ xi. Paragraphs (k) introductory text, (k)(1)(iv), (k)(4), and (k)(5);

■ xii. Paragraphs (m)(3) through (m)(6);

■ xiii. Paragraphs (n)(1), (n)(2)(xiii), (n)(3)(ii), and (n)(6);

■ xiv. Paragraph (o)(3);

■ xv. Paragraphs (p)(2) introductory text, (p)(2)(iii), and (p)(3)(i) through (iii);

■ b. Revising paragraphs (b)(1)(i)(A), (b)(1)(i)(B), (b)(2)(iii), and (b)(2)(iv);

■ c. In paragraph (b)(5), removing in the paragraph heading “FmHA or its successor agency under Public Law 103–354”; and removing “FmHA or its successor agency under Public Law 103–354 shall” and adding “The Government shall” in its place;

■ d. In paragraph (c)(2)(iii)(E), removing “FmHA or its successor agency under Public Law 103–354 funds” and adding “Rural Development funds” in its place and removing “between FmHA or its successor agency under Public Law 103–354’s” and adding “between Rural Development’s” in its place;

■ e. In paragraph (d)(1)(v)(E):

■ i. Removing “FmHA or its successor agency under Public Law 103–354 may” and adding “Rural Development may” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354’s authorization” and adding “Rural Development’s authorization” in its place;

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 authorization” and adding “Rural Development authorization” in its place; and

■ iv. Removing “FmHA or its successor agency under Public Law 103–354 approval” and adding “Rural Development approval” in its place;

- f. In paragraph (f)(5), removing “FmHA Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place;
- g. In paragraph (f)(6), revising the third, fourth, and fifth sentences;
- h. In paragraphs (g)(1) introductory text and (g)(1)(i), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “the United States” in its place;
- i. In paragraph (g)(1)(ii) introductory text:
  - i. Removing “acceptable to FmHA or its successor agency under Public Law 103–354” and adding “acceptable to the United States” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 portion” and adding “United States portion” in its place;
  - iii. Removing “include FmHA or its successor agency under Public Law 103–354” and adding “include United States” in its place;
  - iv. Removing “the FmHA or its successor agency under Public Law 103–354 State Director” and adding “the State Director” in its place; and
  - v. Removing “FmHA or its successor agency under Public Law 103–354 must” and adding “The United States must” in its place;
- j. In paragraph (g)(1)(iv), removing “FmHA or its successor agency under Public Law 103–354”;
- k. In paragraph (g)(2)(iii)(A)(7):
  - i. Removing “Farmers Home Administration or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - ii. Removing “FmHA Instruction” and adding “RD Instruction” in its place; and
  - iii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place;
- l. In paragraph (g)(3)(i) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- m. In paragraphs (g)(3)(i)(B) and (D), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “the United States” in its place;
- n. In paragraph (g)(3)(iii)(A)(3):
  - i. Removing “Farmers Home Administration or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - ii. Removing “FmHA Instruction” and adding “RD Instruction” in its place; and
  - iii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place;
- o. In paragraph (h)(2)(i)(B)(2), removing “the Farmers Home Administration or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- p. In paragraph (j)(3) introductory text, removing “FmHA or its successor agency under Public Law 103–354’s” and adding “RD’s” in its place;
- q. In paragraph (j)(3)(ii)(B):
  - i. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
  - ii. Removing “acceptable to FmHA or its successor agency under Public Law 103–354” and adding “acceptable to Rural Development” in its place; and
  - iii. Removing “determined by FmHA or its successor agency under Public Law 103–354” and adding “determined by Rural Development” in its place;
- r. Revising paragraph (j)(3)(iii);
- s. In paragraph (j)(4)(i) introductory text, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place;
- t. In paragraph (j)(4)(i)(A), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “give FmHA or its successor agency under Public Law 103–354” and adding “give Rural Development” in its place;
- u. In paragraph (j)(4)(i)(B) introductory text, removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place and removing “by FmHA or its successor agency under Public Law 103–354” and adding “by Rural Development” in its place;
- v. In paragraph (j)(4)(i)(B)(1), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place and removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place;
- w. In paragraph (j)(6)(i), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;
- x. In paragraph (k)(7), removing “FmHA or its successor agency under Public Law 103–354 financial” and adding “Agency financial” in its place and removing “The FmHA or its successor agency under Public Law 103–354 State Director” and adding “The State Director” in its place;
- y. In paragraph (k)(8), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- z. In paragraph (l)(1):
  - i. Removing “FmHA or its successor agency under Public Law 103–354 concurrence” and adding “Agency concurrence” in its place;
  - ii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
  - iii. Removing “FmHA or its successor agency under Public Law 103–354/EPA” and adding “Agency/EPA” in its place; and
  - iv. Removing “FmHA or its successor agency under Public Law 103–354 and EPA” and adding “RD and EPA” in its place;
- aa. In paragraph (l)(3), removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place;
- bb. In paragraphs (l)(4) and (m)(1), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- cc. In paragraph (m)(2):
  - i. Removing “FmHA or its successor agency under Public Law 103–354 will tentatively” and adding “RD will tentatively” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 loan” and adding “agency loan” in its place;
  - iii. Removing “from FmHA or its successor agency under Public Law 103–354” and adding “from Rural Development” in its place;
  - iv. Removing “where FmHA or its successor agency under Public Law 103–354” and adding “where Rural Development” in its place;
  - v. Removing “FmHA or its successor agency under Public Law 103–354 will notify” and adding “Rural Development will notify” in its place; and
  - vi. Removing “FmHA or its successor agency under Public Law 103–354 loans” and adding “Rural Development loans” in its place;
- dd. In paragraph (n)(2) introductory text, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place;
- ee. In paragraph (n)(2)(vii), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place;
- ff. In paragraph (n)(2)(x), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place;
- gg. In paragraph (n)(3) introductory text:
  - i. Removing “FmHA or its successor agency under Public Law 103–354 funds” and adding “Rural Development funds” in its place;

- ii. Removing “FmHA or its successor agency under Public Law 103–354’s commitment” and adding “Rural Development’s commitment” in its place;
- iii. Removing “FmHA or its successor agency under Public Law 103–354 loan” and adding “Rural Development loan” in its place;
- iv. Removing “When an FmHA or its successor agency under Public Law 103–354” and adding “When a Rural Development” in its place; and
- v. Removing “provide FmHA or its successor agency under Public Law 103–354” and adding “provide Rural Development” in its place;
- hh. In paragraph (p)(2)(ii), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;
- ii. In paragraph (p)(4):
- i. Removing “FmHA or its successor agency under Public Law 103–354 funds” and adding “Rural Development funds” in its place;
- ii. Removing “benefit of FmHA or its successor agency under Public Law 103–354” and adding “benefit of Rural Development” in its place; and
- iii. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;
- jj. In paragraph (p)(5), removing “Form FmHA or its successor agency under Public Law 103–354 funds” wherever it occurs and adding “Form RD” in its place and removing “by FmHA or its successor agency under Public Law 103–354” and adding “by the Agency” in its place;
- kk. In paragraph (p)(6)(i)(A):
- i. Removing “FmHA or its successor agency under Public Law 103–354 loan” and adding “agency loan” in its place;
- ii. Removing “FmHA or its successor agency under Public Law 103–354 grant” and adding “agency grant” in its place; and
- iii. Removing “FmHA or its successor agency under Public Law 103–354 indebtedness” and adding “RD indebtedness” in its place; and
- 11. In paragraph (p)(6)(i)(B), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “agency” in its place.

The revisions read as follows:

**§ 1942.17 Community facilities.**

- \* \* \* \* \*
- (b) \* \* \*
  - (1) \* \* \*
  - (i) \* \* \*

(A) Loans for water or waste disposal facilities will not be made to a city or town with a population in excess of 10,000 inhabitants. The population

figure is obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

(B) Loans for essential community facilities will not be made to a city or town with a population in excess of 20,000 inhabitants according to the most recent decennial Census.

\* \* \* \* \*

(2) \* \* \*

(iii) For water or waste disposal facilities, the terms *rural* and *rural area* will not include any area in any city or town with a population in excess of 10,000 inhabitants. The population figure is obtained from the most recent decennial Census. If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

(iv) For essential community facilities, the terms *rural* and *rural area* will not include any area in any city or town with a population in excess of 20,000 inhabitants. The population figure is obtained from the most recent decennial Census. If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

\* \* \* \* \*

(f) \* \* \*

(6) *Income determination.* \* \* \* The median household income of the service area and the nonmetropolitan median household income of the State will be determined from 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data. If there is reason to believe that the ACS or other Census Bureau data does not accurately represent the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or Rural Development may obtain, additional information regarding such median household income data. Information must consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. \* \* \*

(j) \* \* \*

(3) \* \* \*

(iii) *Insurance.* The following types of coverage must be maintained if appropriate for the type of project and entity involved. Insurance must be in amounts acceptable to the Agency and

at least equivalent to coverage for real property and equipment acquired without Federal funds.

(A) *Property insurance.* Fire and extended coverage will normally be maintained on all structures except as noted in paragraphs (j)(3)(iii)(A)(1) and (2) of this section. Ordinarily, Rural Development should be listed as mortgagee on the policy when Rural Development has a lien on the property. Normally, major items of equipment or machinery located in the insured structures must also be covered.

Exceptions:

(1) Reservoirs, standpipes, elevated tanks, and other structures built entirely of noncombustible materials if such structures are not normally insured.

(2) Subsurface lift stations except for the value of electrical and pumping equipment therein.

(B) *Liability and property damage insurance, including vehicular coverage.*

(C) *Malpractice insurance.* The need and requirements for malpractice insurance will be carefully and thoroughly considered in connection with each health care facility financed.

(D) *Flood insurance.* Facilities located in special flood- and mudslide-prone areas must comply with the eligibility and insurance requirements of subpart B of part 1806 of this chapter (RD Instruction 426.2).

(E) *Worker’s compensation.* The borrower will carry worker’s compensation insurance for employees in accordance with State laws.

\* \* \* \* \*

**§ 1942.18 [Amended]**

- 163. Amend § 1942.18 by:
- a. Removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place wherever it occurs in the following places:
- i. Paragraph (b);
- ii. Paragraph (c);
- iii. Paragraphs (d) introductory text, (d)(4), and (d)(11);
- iv. Paragraph(e)(2);
- v. Paragraphs(f)(1) introductory text, (f)(1)(iii)(C), (f)(5), and (f)(6);
- vi. Paragraph (g);
- vii. Paragraph (h);
- viii. Paragraphs (j)(1) introductory text, (j)(2), and (j)(5)(iv);
- ix. Paragraph (k)(5);
- x. Paragraphs (m) introductory text, (m)(1) introductory text, (m)(2), and (m)(4);
- xi. Paragraphs (n) introductory text, (n)(5), (n)(6), (n)(8), (n)(9), and (n)(11); and
- xii. Paragraphs (o)(2) introductory text, (o)(2)(iii) introductory text, (o)(2)(iii)(B), (o)(4)(iv), (o)(6), (o)(7)(i)

introductory text, and (o)(7)(iii) introductory text;

- b. In paragraph (d)(1) introductory text, removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place;
- c. In paragraph (d)(1)(i):
  - i. Removing “FmHA or its successor agency under Public Law 103–354 offices” and adding “Rural Development offices” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354’s eligibility” and adding “the Rural Development’s eligibility” in its place; and
  - iii. Removing “FmHA Instruction” and adding “RD Instruction” in its place;
- d. In paragraph (d)(16), removing “FmHA or its successor agency under Public Law 103–354 will” and adding “Rural Development will” in its place and removing “FmHA or its successor agency under Public Law 103–354’s State” and adding “Rural Development’s State” in its place;
- e. In paragraph (e)(1):
  - i. Removing “from FmHA or its successor agency under Public Law 103–354” and adding “from Rural Development” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place; and
  - iii. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by Rural Development” in its place;
- f. In paragraph (f) introductory text:
  - i. Removing “FmHA or its successor agency under Public Law 103–354 State” and adding “Rural Development State” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 review” and adding “Rural Development review” in its place;
  - iii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
  - iv. Removing “FmHA or its successor agency under Public Law 103–354 loan” and adding “Rural Development loan” in its place; and
  - v. Removing “pledged to FmHA or its successor agency under Public Law 103–354” and adding “pledged to Rural Development” in its place;
- g. In paragraphs (f)(1)(iii)(B)(2) and (3), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- h. In paragraph (n)(3):
  - i. Removing “Form FmHA or its successor agency under Public Law

103–354” wherever it occurs and adding “Form RD” in its place;

- ii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place; and
- iii. Removing “acting through the Farmers Home Administration or its successor agency under Public Law 103–354” and adding “acting through Rural Development” in its place;
- i. In paragraph (o)(1), removing “where FmHA or its successor agency under Public Law 103–354” and adding “where Rural Development” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;
- j. In paragraph (o)(3):
  - i. Removing “made by FmHA or its successor agency under Public Law 103–354” and adding “made by Rural Development” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 for acceptance” wherever it occurs and adding “Rural Development for acceptance” in its place;
  - iii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place; and
  - iv. Removing “from FmHA or its successor agency under Public Law 103–354” and adding “from Rural Development” in its place;
- k. In paragraph (o)(5), removing “FmHA or its successor agency under Public Law 103–354 State” wherever it occurs and adding “Rural Development State” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- l. In paragraph (o)(7)(i)(C), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place; and
- m. In paragraph (o)(7)(ii), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 State” and adding “the Rural Development State” in its place.

#### § 1942.19 [Amended]

- 164. Amend § 1942.19 by:
  - a. In the following paragraphs, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place:
    - i. Paragraphs (b)(1), (b)(2) introductory text, (b)(2)(iv), and (b)(2)(vi);
    - ii. Paragraph (c)(11);
    - iii. Paragraph (d);

■ iv. Paragraphs (e) introductory text and (e)(2)(i) through (e)(2)(iii);

- v. Paragraph (f);
- vi. Paragraph (g) introductory text; and
- vii. Paragraphs (h)(1), (h)(4), (h)(7), (h)(9), (h)(10)(ii), and (h)(10)(iii).
- b. In paragraph (c) introductory text, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place and removing “discused” and adding “discussed” in its place;
- c. In paragraph (e)(1), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- d. In paragraph (e)(2), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 advance” and adding “Rural Development advance” in its place;
- e. In paragraph (h)(2):
  - i. Removing “purchased by FmHA or its successor agency under Public Law 103–354” and adding “purchased by Rural Development” in its place;
  - ii. Removing “Farmers Home Administration or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - iii. Removing “address of FmHA or its successor agency under Public Law 103–354” and adding “address of Rural Development” in its place; and
  - iv. Removing “FmHA or its successor agency under Public Law 103–354 State Office” and adding “Rural Development State Office” in its place;
- f. In paragraph (h)(10)(iv), removing “FmHA” and adding “RD” in its place;
- g. In paragraph (h)(11)(iii), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place; and
- h. In paragraph (i):
  - i. Removing “Bidding by FmHA or its successor agency under Public Law 103–354” and adding “Bidding by Rural Development” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 will not” and adding “Rural Development will not” in its place;
  - iii. Removing “FmHA or its successor agency under Public Law 103–354’s rates” and adding “Rural Development’s rates” in its place; and
  - iv. Removing “FmHA or its successor agency under Public Law 103–354 will negotiate” and adding “Rural Development will negotiate” in its place.

#### § 1942.20 [Amended]

- 165. Amend § 1942.20 by:

- a. In paragraph (a) introductory text, removing “FmHA or its successor agency under Public Law 103–354”;
- b. In paragraph (a)(1), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Agency’s” in its place;
- c. In paragraph (a)(12), removing “Farmers Home Administration or its successor agency under Public Law 103–354—Department of Agriculture Pertaining to EDA Public Works Projects Assisted by an FmHA or its successor agency under Public Law 103–354 Loan” and adding “Department of Agriculture Pertaining to EDA Public Works Projects Assisted by an Agency Loan” in its place;
- d. In paragraph (a)(13), removing “Farmers Home Administration or its successor agency under Public Law 103–354–”;
- e. In paragraphs (a)(18) and (a)(20), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
- f. In paragraph (a)(25), removing “EPA and FmHA or its successor agency under Public Law 103–354” and adding “Environmental Protection Agency and the Agency” in its place; and
- g. In paragraph (b), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Agency” in its place.

#### Subpart C—Fire and Rescue and Other Small Community Facilities Projects

##### § 1942.102 [Amended]

- 166. Amend § 1942.102 by:
  - a. In paragraph (a), removing “Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “Agency” in its place; and
  - b. In paragraph (b), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “RD’s” in its place.

##### § 1942.105 [Amended]

- 167. Amend § 1942.105 by removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

##### § 1942.107 [Amended]

- 168. Amend § 1942.107(c) by removing “FmHA or its successor agency under Public Law 103–354 funds” and adding “Agency funds” in its place and by removing “by Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “by RD” in its place.

##### § 1942.108 [Amended]

- 169. Amend § 1942.108(c) by removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place.

##### § 1942.112 [Amended]

- 170. Amend § 1942.112 by:
  - a. In paragraph (a)(2)(ii), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;
  - b. In paragraph (a)(3) introductory text, removing “FmHA or its successor agency under Public Law 103–354 approval” and adding “Agency approval” in its place and removing “FmHA or its successor agency under Public Law 103–354 determines” and adding “RD determines” in its place;
  - c. In paragraphs (a)(3)(iii) and (a)(3)(iv), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place; and
  - d. In paragraph (a)(3)(v):
    - i. Removing “FmHA or its successor agency under Public Law 103–354 may authorize” and adding “RD may authorize” in its place;
    - ii. Removing “FmHA or its successor agency under Public Law 103–354’s authorization” and adding “RD’s authorization” in its place;
    - iii. Removing “and FmHA or its successor agency under Public Law 103–354 authorization” and adding “and Agency authorization” in its place; and
    - iv. Removing “without FmHA or its successor agency under Public Law 103–354 approval” and adding “without Agency approval” in its place.

##### § 1942.114 [Amended]

- 171. Amend § 1942.114 by:
  - a. In the introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place; and
  - b. In paragraph (a)(1), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place.

##### § 1942.115 [Amended]

- 172. Amend § 1942.115 by removing “FmHA or its successor agency under Public Law 103–354 may require” and adding “RD may require” in its place and by removing “FmHA or its successor agency under Public Law 103–354 employee” and adding “Agency employee” in its place.

##### § 1942.116 [Amended]

- 173. Amend § 1942.116 by:
  - a. In the introductory text, removing “FmHA or its successor agency under

- Public Law 103–354” and adding “Agency” in its place; and
- b. In paragraphs (a) and (b), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

##### § 1942.122 [Amended]

- 174. Amend § 1942.122 by:
  - a. In the heading of paragraph (a), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place; and
  - b. In paragraph (f), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

##### § 1942.123 [Amended]

- 175. Amend § 1942.123 by:
  - a. In paragraphs (a)(1) and (i), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place; and
  - b. In paragraph (k):
    - i. Removing “FmHA or its successor agency under Public Law 103–354 personnel” and adding “Agency personnel” in its place;
    - ii. Removing “FmHA Instruction” and adding “RD Instruction” in its place; and
    - iii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “RD office” in its place.

##### § 1942.126 [Amended]

- 176. Amend § 1942.126 by:
  - a. In paragraph (b) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;
  - b. In paragraph (b)(1), removing “FmHA or its successor agency under Public Law 103–354 may” and adding “RD may” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “RD office” in its place;
  - c. In paragraph (b)(2), removing “FmHA or its successor agency under Public Law 103–354 concurrence” and adding “Agency concurrence” in its place and removing “FmHA or its successor agency under Public Law 103–354 may” and adding “RD may” in its place;
  - d. In paragraphs (b)(3), (c), and (d)(1), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place;
  - e. In paragraph (d)(2):
    - i. Removing “FmHA or its successor agency under Public Law 103–354 for approval” and adding “RD for approval” in its place;
    - ii. Removing “approved by FmHA or its successor agency under Public Law

103–354” and adding “approved by RD” in its place; and

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 District” and adding “Agency District” in its place;

■ f. In paragraph (h) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;

■ g. In paragraph (k), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place;

■ h. In paragraph (l)(1), removing “FmHA or its successor agency under Public Law 103–354 will” and adding “RD will” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ i. In paragraph (l)(2), removing “to FmHA or its successor agency under Public Law 103–354” and adding “to RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 funds” and adding “Agency funds” in its place;

■ j. In paragraph (l)(2)(iii) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;

■ k. In paragraph (l)(2)(iii)(B), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;

■ l. In paragraph (l)(3) introductory text:

■ i. Removing “or FmHA or its successor agency under Public Law 103–354” and adding “or RD” in its place;

■ ii. Removing “inspector to FmHA or its successor agency under Public Law 103–354” and adding “inspector to RD” in its place;

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 District” and adding “Agency District” in its place;

■ iv. Removing “guide 11” and adding “Guide 11” in its place;

■ v. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place; and

■ vi. Removing “Inspections by FmHA or its successor agency under Public Law 103–354” and adding “Inspections by RD” in its place;

■ m. In paragraph (l)(4), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 State Director” and adding “Agency State Director” in its place;

■ n. In paragraphs (l)(5) and (l)(6)(i) introductory text, removing “FmHA or

its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place;

■ o. In paragraph (l)(6)(i)(C), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “RD’s” in its place; and

■ p. In paragraph (l)(6)(ii), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 District” and adding “Agency District” in its place; and

■ q. In paragraph (l)(6)(iii) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place.

#### § 1942.127 [Amended]

■ 177. Amend § 1942.127 by:

■ a. In paragraph (e)(1), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place and removing “by FmHA or its successor agency under Public Law 103–354” and adding “by RD” in its place; and

■ b. In paragraph (e)(2), removing “FmHA or its successor agency under Public Law 103–354 loan” and adding “Agency loan” in its place and removing “FmHA or its successor agency under Public Law 103–354 may” and adding “RD may” in its place.

#### § 1942.128 [Amended]

■ 178. Amend § 1942.128(b) by removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place.

#### § 1942.134 [Amended]

■ 179. Amend § 1942.134 introductory text by removing “FmHA Instruction” and adding “RD Instruction” in its place and by removing “FmHA or its successor agency under Public Law 103–354 Office” and adding “Rural Development office” in its place.

#### Subpart G—Rural Business Enterprise Grants and Television Demonstration Grants

#### § 1942.301 [Amended]

■ 180. Amend § 1942.301 by removing “Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and “FmHA or its successor agency under Public Law 103–354” wherever they occur and adding “Agency” in their place.

#### §§ 1942.302, 1942.303, and 1942.304 [Amended]

■ 181. Amend §§ 1942.302, 1942.303, and 1942.304 by removing “FmHA or its

successor agency under Public Law 103–354” wherever it occurs and adding “Agency” in its place.

■ 182. In addition to the amendments set forth above, in § 1942.304, revise the definition of “Rural and Rural Area” to read as follows:

#### § 1942.304 Definitions.

\* \* \* \* \*

*Rural and Rural Area.* Any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town. The population figure is obtained from the most recent decennial Census. If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

\* \* \* \* \*

#### § 1942.305 [Amended]

■ 183. Amend § 1942.305 by:

■ a. In paragraph (b) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place; and

■ b. In paragraphs (b)(3)(iv)(A), (b)(3)(iv)(C), (b)(3)(iv)(E), and (b)(3)(v), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

#### § 1942.306 [Amended]

■ 184. Amend § 1942.306(c) by:

■ a. Removing “FmHA or its successor agency under Public Law 103–354 grant” and adding “Agency grant” in its place;

■ b. Removing “FmHA or its successor agency under Public Law 103–354 loan” and adding “Agency loan” in its place; and

■ c. Removing “with FmHA or its successor agency under Public Law 103–354” and adding “with RD” in its place.

#### § 1942.308 [Amended]

■ 185. Amend § 1942.308 by:

■ a. In paragraph (a):

■ i. Removing “FmHA or its successor agency under Public Law 103–354 assistance” and adding “Agency assistance” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354 has” and adding “RD has” in its place; and

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 regulations” and adding “Agency regulations” in its place;

■ b. In paragraph (b), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place; and

- c. In paragraph (d):
- i. Removing “FmHA or its successor agency under Public Law 103–354 for” and adding “RD for” in its place;
- ii. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by RD” in its place; and
- iii. Removing “FmHA or its successor agency under Public Law 103–354 State” and adding “Agency State” in its place.

#### § 1942.310 [Amended]

- 186. Amend § 1942.310 by:
  - a. In paragraph (a):
    - i. Removing “When FmHA or its successor agency under Public Law 103–354” and adding “When RD” in its place;
    - ii. Removing “no FmHA or its successor agency under Public Law 103–354” and adding “no Agency” in its place;
    - iii. Removing “unless FmHA or its successor agency under Public Law 103–354” and adding “unless RD” in its place; and
    - iv. Removing “FmHA or its successor agency under Public Law 103–354 shall” and adding “RD shall” in its place;
  - b. In paragraph (b)(1), removing “FmHA or its successor agency under Public Law 103–354 will” and adding “RD will” in its place;
  - c. In paragraph (b)(2), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “RD’s” in its place;
  - d. In paragraph (b)(4):
    - i. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
    - ii. Removing “FmHA or its successor agency under Public Law 103–354 will” and adding “RD will” in its place;
    - iii. Removing “Forms FmHA” and adding “Forms RD” in its place;
    - iv. Removing “FmHA or its successor agency under Public Law 103–354’s” wherever it occurs and adding “RD’s” in its place;
    - v. Removing “prior to FmHA or its successor agency under Public Law 103–354” and adding “prior to RD” in its place; and
    - vi. Removing “FmHA or its successor agency under Public Law 103–354 may” and adding “RD may” in its place;
  - e. In paragraph (c)(1) introductory text, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place;
  - f. In paragraph (c)(1)(ii), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;

- g. In paragraph (c)(3):
  - i. Removing “applicant to FmHA or its successor agency under Public Law 103–354” and adding “applicant to RD” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 National” and adding “Agency National” in its place; and
  - iii. Removing “provided FmHA or its successor agency under Public Law 103–354” and adding “provided RD” in its place;
- h. In paragraph (c)(4):
  - i. Removing “FmHA or its successor agency under Public Law 103–354 grant” and adding “Agency grant” in its place;
  - ii. Removing “to FmHA or its successor agency under Public Law 103–354” and adding “to RD” in its place; and
  - iii. Removing “from FmHA or its successor agency under Public Law 103–354” and adding “from RD” in its place.

#### §§ 1942.311 and 1942.313 [Amended]

- 187. Amend §§ 1942.311(b) and 1942.313(b) by removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

#### § 1942.315 [Amended]

- 188. Amend § 1942.315(b) by removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place.

#### § 1942.316 [Amended]

- 189. Amend § 1942.316(a) by removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

### PART 1944—HOUSING

- 190. The authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

#### Subpart B—Housing Application Packaging Grants

##### § 1944.51 [Amended]

- 191. Amend § 1944.51 by removing “Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in their place.

##### §§ 1944.52 and 1944.53 [Amended]

- 192. Amend §§ 1944.52 and 1944.53 by removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.
- 193. In addition to the amendments set forth above, in § 1944.52, revise the

definition of “Designated counties” to read as follows:

#### § 1944.52 Definitions.

\* \* \* \* \*

*Designated counties.* These counties are listed in exhibit D of this subpart. The counties meet the following criteria:

(1) Twenty percent or more of the county population is at or below the poverty level based on the most recent 5-year survey of the American Community Survey of the Census Bureau or other Census Bureau data if needed; and

(2) Ten percent or more of the occupied housing units are substandard based on the most recent decennial Census of the United States.

\* \* \* \* \*

#### § 1944.71 [Amended]

- 194. Amend § 1944.71(b) by removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place.

#### § 1944.73 [Amended]

- 195. Amend § 1944.73 by:
  - a. In paragraph (a) introductory text:
    - i. Removing “an FmHA or its successor agency under Public Law 103–354 office” and adding “a Rural Development office” in its place;
    - ii. Removing “the FmHA or its successor agency under Public Law 103–354 office” and adding “the Rural Development office” in its place;
    - iii. Removing “FmHA Instruction” and adding “RD Instruction” in its place; and
    - iv. Removing “any FmHA or its successor agency under Public Law 103–354 office” and adding “any Rural Development office” in its place;
  - b. In paragraph (a)(1), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - c. In paragraph (a)(2), removing “FmHA” wherever it occurs and adding “RD” in its place; and
  - d. In paragraphs (b) and (d), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

#### Subpart I—Self-Help Technical Assistance Grants

##### § 1944.401 [Amended]

- 196. Amend § 1944.401 by removing “to FmHA or its successor agency under Public Law 103–354” and adding “to Rural Development” in its place and by removing “an FmHA or its successor agency under Public Law 103–354” and adding “a Rural Development” in its place.

**§ 1944.402 [Amended]**

■ 197. Amend § 1944.402 introductory text by removing “Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1944.403, 1944.404, 1944.415, 1944.416, 1944.419, 1944.422, and 1944.426 [Amended]**

■ 198. Remove “FmHA or its successor agency under Public Law 103–354” wherever it occurs and add “Rural Development” in its place in the following places:

- a. Section 1944.403;
- b. Section 1944.404;
- c. Section 1944.415;
- d. Section 1944.416;
- e. Section 1944.419;
- f. Section 1944.422; and
- g. Section 1944.426.

**§ 1944.410 [Amended]**

■ 199. Amend § 1944.410 by:

- a. In paragraphs (b)(1)(ii) and (c)(1), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;
- b. In paragraph (c)(3), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and
- c. In paragraph (e)(6), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1944.411 [Amended]**

■ 200. Amend § 1944.411 by:

- a. In paragraph (d), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place; and
- b. In paragraph (g), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1944.412 [Amended]**

■ 201. Amend § 1944.412 by removing “FmHA” wherever it occurs and adding “RD” in its place.

**§ 1944.413 [Amended]**

■ 202. Amend § 1944.413 by removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place.

**§ 1944.417 [Amended]**

■ 203. Amend § 1944.417 by:

- a. In the introductory text to the section, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;
- b. In paragraphs (a)(1), (a)(2)(i), and (a)(2)(ii), removing “FmHA or its

successor agency under Public Law 103–354” and adding “RD” in its place; and

■ c. In paragraphs (b) introductory text, (b)(1)(ii), and (b)(2), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

**§ 1944.423 [Amended]**

■ 204. Amend § 1944.423 by:

- a. Removing “FmHA or its successor agency under Public Law 103–354’s” wherever it occurs and adding “Rural Development’s” in its place;
- b. Removing “only FmHA or its successor agency under Public Law 103–354 can” and adding “only Rural Development can” in its place; and
- c. Removing “with FmHA or its successor agency under Public Law 103–354 in the” and adding “with Rural Development in the” in its place.

**§ 1944.425 [Amended]**

■ 205. Amend § 1944.425 by removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place.

**Subpart K—Technical and Supervisory Assistance Grants****§ 1944.501 [Amended]**

■ 206. Amend § 1944.501 by:

- a. In paragraph (a), removing “FmHA or its successor agency under Public Law 103–354 employee” and adding “Rural Development employee” in its place and removing “an FmHA or its successor agency under Public Law 103–354 employee” and adding “a Rural Development employee” in its place; and
- b. In paragraph (b), removing “The Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1944.502 [Amended]**

■ 207. Amend § 1944.502 by:

- a. In paragraphs (a) introductory text, (a)(1), and (b), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- b. In paragraph (c), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place and removing “FmHA or its successor agency under Public Law 103–354 resources” and adding “Rural Development resources” in its place; and
- c. In paragraph (d), removing “FmHA or its successor agency under Public

Law 103–354” and adding “Rural Development” in its place.

**§§ 1944.506, 1944.510, 1944.512, 1944.514, 1944.516, 1944.520, 1944.525, 1944.529, 1944.538, 1944.541, 1944.543, 1944.547, and 1944.549 [Amended]**

■ 208. Remove “FmHA or its successor agency under Public Law 103–354” wherever it occurs and add “Rural Development” in its place in the following places:

- a. Section 1944.506;
- b. Section 1944.510;
- c. Section 1944.512;
- d. Section 1944.514;
- e. Section 1944.516;
- f. Section 1944.520;
- g. Section 1944.525;
- h. Section 1944.529;
- i. Section 1944.538;
- j. Section 1944.541;
- k. Section 1944.543;
- l. Section 1944.547; and
- m. Section 1944.549.

**§ 1944.526 [Amended]**

■ 209. Amend § 1944.526 by:

- a. In paragraph (a)(2)(i)(E), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and
- b. In paragraphs (a)(5) and (c)(1)(i), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place.

**§ 1944.531 [Amended]**

■ 210. Amend § 1944.531 by removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place and by removing “by FmHA or its successor agency under Public Law 103–354” from paragraph (c)(13) and adding “by Rural Development” in its place.

**§ 1944.533 [Amended]**

■ 211. Amend § 1944.533 by:

- a. In paragraphs (c), (d), (f)(1), (f)(2) introductory text, (f)(2)(iii), (f)(2)(iv), (f)(4) introductory text, (f)(4)(i), and (f)(6), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;
- b. In paragraph (e) introductory text, removing “FmHA Instruction” and adding “RD Instruction” in its place and removing “Director of Information in the National Office” and adding “Director, Legislative and Public Affairs Staff (LAPAS), in the Rural Development National Office” in its place;
- c. In paragraph (f)(4)(ii), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and



■ d. In paragraph (f)(5), removing “LAPIS” wherever it occurs and adding “LAPAS” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place.

**§ 1944.535 [Amended]**

■ 212. Amend § 1944.535 by:

■ a. In paragraphs (a) and (b), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place; and

■ b. In paragraph (c), removing “FmHA or its successor agency under Public Law 103–354 Appeal” and adding “Rural Development Appeal” in its place.

**§ 1944.536 [Amended]**

■ 213. Amend § 1944.536 by removing “FmHA or its successor agency under Public Law 103–354 determines” and adding “Rural Development determines” in its place and by removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place.

**§ 1944.540 [Amended]**

■ 214. Amend § 1944.540 by:

■ a. In paragraph (b), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place; and

■ b. In paragraph (c), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1944.545 [Amended]**

■ 215. Amend § 1944.545 by removing “FmHA or its successor agency under Public Law 103–354 440–1” and adding “RD 1940–1” in its place.

**§ 1944.548 [Amended]**

■ 216. Amend § 1944.548 by:

■ a. In the section heading, in paragraph (a), and in paragraph (b) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and

■ b. In paragraph (b)(3), removing “FmHA Instruction” and adding “RD Instruction” in its place.

**Subpart N—Housing Preservation Grants**

**§ 1944.654 [Amended]**

■ 217. Amend § 1944.654 by:

■ a. In paragraph (a), removing “FmHA Instruction” wherever it occurs and adding “RD Instruction” in its place; and

■ b. In paragraph (b), removing “FmHA Instruction” and adding “RD

Instruction” in its place and removing “any Agency office” and adding “any Rural Development office” in its place.

**§ 1944.657 [Amended]**

■ 218. Amend § 1944.657 by removing “FmHA Instruction” and adding “RD Instruction” in its place and by removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place.

**§ 1944.658 [Amended]**

■ 219. Amend § 1944.658(a)(3) by removing “or its successor agency under Public Law 103–354” wherever it occurs.

**§§ 1944.660, 1944.663, 1944.664, 1944.666, 1944.668, 1944.671, 1944.674, 1944.678, 1944.679, 1944.681, 1944.683, 1944.684, and 1944.689 [Amended]**

■ 220. Remove “FmHA or its successor agency under Public Law 103–354” wherever it occurs and add “Rural Development” in its place in the following places:

■ a. Section 1944.660 section heading and paragraph (a);

■ b. Section 1944.663(a)(7) and (a)(8);

■ c. Section 1944.664(c)(10)(ii);

■ d. Section 1944.666(a)(2), (b)(5), and (c);

■ e. Section 1944.668;

■ f. Section 1944.671(b) introductory text and paragraphs (b)(2) and (c);

■ g. Section 1944.674(b) and (c);

■ h. Section 1944.678;

■ i. Section 1944.679(b) introductory text and paragraph (b)(4);

■ j. Section 1944.681;

■ k. Section 1944.683(a), (b) introductory text, (c), and (d);

■ l. Section 1944.684 (a), (b) introductory text, (b)(2), (c), and (d); and

■ m. Section 1944.689(b).

**§ 1944.672 [Amended]**

■ 221. Amend § 1944.672 by:

■ a. In paragraphs (c) and (e) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;

■ b. In paragraph (e)(3):

■ i. Removing “FmHA or its successor agency under Public Law 103–354’s environmental” and adding “Rural Development’s environmental” in its place; and

■ ii. Removing “an FmHA or its successor agency under Public Law 103–354 environmental” and adding “a Rural Development environmental” in its place; and

■ c. In paragraph (g), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

**§ 1944.673 [Amended]**

■ 222. Amend § 1944.673 by:

■ a. In paragraph (a):

■ i. Removing “FmHA or its successor agency under Public Law 103–354 has” and adding “Rural Development has” in its place;

■ ii. Removing “FmHA Instruction” and adding “RD Instruction” in its place; and

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 office” wherever it occurs and adding “Rural Development office” in its place; and

■ b. In paragraph (c), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

**§ 1944.676 [Amended]**

■ 223. Amend § 1944.676 by:

■ a. In paragraph (a), removing “appropriate FmHA or its successor agency under Public Law 103–354” and adding “appropriate Rural Development” in its place and removing “any FmHA or its successor agency under Public Law 103–354 Office” and adding “any Rural Development office” in its place;

■ b. In paragraphs (b) introductory text, (b)(1)(iv), and (b)(1)(xii), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;

■ c. In paragraph (b)(1)(iii):

■ i. Removing “FmHA Instruction” and adding “RD Instruction” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354 office” wherever it occurs and adding “Rural Development office” in its place; and

■ iii. Removing “to FmHA or its successor agency under Public Law 103–354” and adding “to Rural Development” in its place;

■ d. In paragraph (b)(1)(x), removing “Rural Development or its successor agency under Public Law 103–354”;

■ e. In paragraph (c), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place;

■ f. In paragraph (d)(4), removing “FmHA Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place;

■ g. In paragraph (d)(5), removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place

and removing “to FmHA or its successor agency under Public Law 103–354” and adding “to Rural Development” in its place;

■ h. In paragraph (g), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and

■ i. In paragraph (h), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place.

#### § 1944.682 [Amended]

■ 224. Amend § 1944.682 by:

■ a. In the introductory text, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;

■ b. In paragraph (a):

■ i. Removing “FmHA or its successor agency under Public Law 103–354 determines” and adding “Rural Development determines” in its place;

■ ii. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place; and

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place; and

■ c. In paragraph (b), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;

■ d. In paragraph (c):

■ i. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354 will” and adding “Rural Development will” in its place;

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place; and

■ iv. Removing “by FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “by Rural Development” in its place; and

■ e. In paragraph (d), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

#### § 1944.688 [Amended]

■ 225. Amend § 1944.688 by:

■ a. In paragraphs (a) and (b), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place; and

■ b. In paragraph (c), removing “FmHA or its successor agency under Public

Law 103–354’s appeal” and adding “Rural Development’s appeal” in its place.

#### § 1944.690 [Amended]

■ 226. Amend § 1944.690 by removing “Administrator of FmHA or its successor agency under Public Law 103–354” and adding “Under Secretary for Rural Development (or designee)” in its place.

### PART 1948—RURAL DEVELOPMENT

■ 227. The authority citation for part 1948 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932 note.

#### Subpart B—Section 601 Energy Impacted Area Development Assistance

##### § 1948.51 [Amended]

■ 228. Amend § 1948.51 by:

■ a. Removing “Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;

■ b. Removing “to FmHA or its successor agency under Public Law 103–354” and adding “to Rural Development” in its place; and

■ c. Removing “an FmHA or its successor agency under Public Law 103–354” and adding “a Rural Development” in its place.

##### §§ 1948.53, 1948.56, 1948.60, 1948.62, 1948.68, 1948.70, 1948.81, 1948.86, 1948.88, 1948.91, 1948.94, and 1948.95 [Amended]

■ 229. Remove “FmHA or its successor agency under Public Law 103–354” wherever it occurs and add “Rural Development” in its place in the following places:

■ a. Section 1948.53;

■ b. Section 1948.56;

■ c. Section 1948.60;

■ d. Section 1948.62(b);

■ e. Section 1948.68(g);

■ f. Section 1948.70(b);

■ g. Section 1948.81(a) and (b);

■ h. Section 1948.86(a)(1) and (a)(2);

■ i. Section 1948.88;

■ j. Section 1948.91;

■ k. Section 1948.94(a) introductory text and (b); and

■ l. Section 1948.95.

■ 230. Revise § 1948.61 introductory text to read as follows:

##### § 1948.61 State supplements and guides.

Rural Development State Directors will obtain National Office clearance for all State supplements and guides in accordance with paragraph VIII of RD Instruction 2006–B, (available in any Rural Development office).

\* \* \* \* \*

##### § 1948.70 [Amended]

■ 231. Amend § 1948.70(c) by removing “Administrator of FmHA or its successor agency under Public Law 103–354” and adding “Under Secretary for Rural Development” in its place.

##### § 1948.79 [Amended]

■ 232. Amend § 1948.79 by:

■ a. Removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place in the following places:

■ i. Paragraph (a);

■ ii. Paragraph (c) introductory text;

■ iii. Paragraph (e) introductory text;

■ iv. Paragraph (f);

■ v. Paragraph (g);

■ vi. Paragraph (h) introductory text;

■ vii. Paragraph (i);

■ viii. Paragraph (j);

■ ix. Paragraphs (k) introductory text and (k)(12);

■ b. In paragraph (c)(4), removing “Forms FmHA” and adding “Form RD” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;

■ c. In paragraph (k)(8), removing “FmHA or its successor agency under Public Law 103–354 440–1” and adding “RD 1940–1” in its place; and

■ d. In paragraphs (k)(9) and (k)(10), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

##### § 1948.81 [Amended]

■ 233. Amend § 1948.81(d) by removing “FmHA or its successor agency under Public Law 103–354 State” and adding “Rural Development State” in its place and by removing “Administrator, FmHA or its successor agency under Public Law 103–354” and adding “Under Secretary for Rural Development” in its place.

##### § 1948.82 [Amended]

■ 234. Amend § 1948.82 by:

■ a. Removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place in the following places:

■ i. Paragraphs (a) introductory text and (a)(10);

■ ii. Paragraph (c);

■ iii. Paragraph (d);

■ iv. Paragraph (e);

■ v. Paragraphs (f) introductory text, (f)(1), and (f)(2);

■ vi. Paragraph (g);

■ vii. Paragraph (h); and

■ viii. Paragraph (m).

■ b. In paragraph (i), removing “FmHA or its successor agency under Public

Law 103–354 National” and adding “Rural Development State” in its place and removing “Administrator” and adding “Under Secretary for Rural Development” in its place;

■ c. In paragraph (j), removing “Administrator, FmHA or its successor agency under Public Law 103–354, the FmHA or its successor agency under Public Law 103–354 State” and adding “Under Secretary for Rural Development, the Rural Development State” in its place;

■ d. In paragraph (k), removing “FmHA or its successor agency under Public Law 103–354 State” and adding “Rural Development State” in its place and removing “Administrator, FmHA or its successor agency under Public Law 103–354” and adding “Under Secretary for Rural Development” in its place; and

■ e. In paragraph (l), removing “Administrator of FmHA or its successor agency under Public Law 103–354” and adding “Under Secretary for Rural Development” in its place.

#### §§ 1948.83 and 1948.97 [Amended]

■ 235. Amend §§ 1948.83 and 1948.97 by removing “FmHA” and adding “RD” in its place.

#### § 1948.84 [Amended]

■ 236. Amend § 1948.84 by:

■ a. Removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place in the following places:

- i. Paragraph (a);
- ii. Paragraph (d) introductory text;
- iii. Paragraphs (e) introductory text and (e)(1);
- iv. Paragraph (f);
- v. Paragraph (g);
- vi. Paragraph (h) introductory text;
- vii. Paragraph (i) introductory text; and

■ viii. Paragraphs (i)(14) and (i)(17).

■ b. In paragraph (b):

■ i. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “The Rural Development office” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354 District” and adding “Rural Development District” in its place;

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 State” and adding “the Rural Development State” in its place; and

■ iv. Removing “the time the AD–622” and adding “the time the Form AD–622” in its place;

■ c. In paragraphs (d)(2) and (d)(8), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;

■ d. In paragraph (d)(9), removing “Forms FmHA or its successor agency

under Public Law 103–354 400–1 and Form FmHA or its successor agency under Public Law 103–354 400–4” and adding “Form RD 400–1 and Form RD 400–4” in its place;

■ e. In paragraph (i)(10), removing “FmHA or its successor agency under Public Law 103–354 440–1” and adding “RD 1940–1” in its place;

■ f. In paragraph (i)(11), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;

■ g. In paragraph (i)(12), removing “FmHA or its successor agency under Public Law 103–354 400” and adding “RD 400–4” in its place; and

■ h. In paragraph (i)(13), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

#### § 1948.89 [Amended]

■ 237. Amend § 1948.89 by:

■ a. In the heading of the section and in paragraph (a) introductory text, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;

■ b. In paragraph (a)(1):

■ i. Removing “FmHA or its successor agency under Public Law 103–354 State” wherever it occurs and adding “the Rural Development State” in its place;

■ ii. Removing “Administrator, FmHA or its successor agency under Public Law 103–354” and adding “Under Secretary for Rural Development” in its place; and

■ iii. Removing “for FmHA or its successor agency under Public Law 103–354” and adding “for Rural Development” in its place;

■ c. In paragraph (a)(2), removing “Administrator” and adding “Under Secretary for Rural Development” in its place;

■ d. In paragraph (a)(3), removing “Administrator, FmHA or its successor agency under Public Law 103–354” and adding “Under Secretary for Rural Development” in its place; and

■ e. In paragraphs (a)(4), (a)(5), and (b), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

#### § 1948.90 [Amended]

■ 238. Amend § 1948.90 by:

■ a. In paragraphs (a) introductory text and (a)(1), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;

■ b. In paragraph (a)(2):

■ i. Removing “Administrator, FmHA or its successor agency under Public Law

103–354” and adding “Under Secretary for Rural Development” in its place;

■ ii. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by Rural Development” in its place;

■ iii. Removing “to FmHA or its successor agency under Public Law 103–354” and adding “to Rural Development” in its place; and

■ iv. Removing “by the FmHA or its successor agency under Public Law 103–354” and adding “by the Rural Development” in its place; and

■ c. In paragraphs (a)(3), (b)(2), (b)(3), and (b)(5), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

#### § 1948.92 [Amended]

■ 239. Amend § 1948.92 by:

■ a. In paragraphs (a) and (b), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;

■ b. In paragraph (c):

■ i. Removing “FmHA or its successor agency under Public Law 103–354 State” and adding “Rural Development State” in its place;

■ ii. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by Rural Development” in its place; and

■ iii. Removing “FmHA Instruction” and adding “RD Instruction” in its place;

■ c. In paragraphs (d) and (e), removing “FmHA or its successor agency under Public Law 103–354 440–1” and adding “RD 1940–1” in its place;

■ d. In paragraph (f):

■ i. Removing “FmHA Instruction” and adding “RD Instruction” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354 Office” and adding “Rural Development office” in its place; and

■ iii. Removing “Director of Information, Farmers Home Administration or its successor agency under Public Law 103–354” and adding “Director, Legislative and Public Affairs Staff (LAPAS), in the Rural Development National Office” in its place;

■ e. In paragraph (g)(3), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;

■ f. In paragraph (g)(4), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 State” and adding “Rural Development State” in its place;

- g. In paragraph (g)(6), removing “Form FmHA or its successor agency under Public Law 103–354 440–1” and adding “Form RD 1940–1” in its place and removing “FmHA or its successor agency under Public Law 103–354 National” and adding “Rural Development National” in its place;
- h. In paragraph (g)(7), removing “Director of Information in the FmHA or its successor agency under Public Law 103–354 National Office” and adding “Director, LAPAS, in the Rural Development National Office” in its place;
- i. In paragraph (g)(10), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place; and
- j. In paragraph (g)(11):
  - i. Removing “FmHA or its successor agency under Public Law 103–354 State” and adding “Rural Development State” in its place;
  - ii. Removing “Director, Legislative Affairs and Public Information Staff (LAPIS)” and adding “Director, LAPAS” in its place;
  - iii. Removing “LAPIS” wherever it occurs and adding “LAPAS” in its place; and
  - iv. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place.

#### § 1948.93 [Amended]

- 240. Amend § 1948.93 by removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place and by removing “FmHA Instruction” and adding “RD Instruction” in its place.

#### § 1948.94 [Amended]

- 241. Amend § 1948.94 by:
  - a. In paragraph (a) introductory text, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place; and
  - b. In paragraph (b), removing “FmHA Instruction 402.1 (available in any FmHA or its successor agency under Public Law 103–354 office)” and adding “RD Instruction 1902–A (available in any Rural Development office)” in its place and removing “to FmHA or its successor agency under Public Law 103–354” and adding “to Rural Development” in its place.

#### § 1948.96 [Amended]

- 242. Amend § 1948.96 by:
  - a. In paragraph (a), removing “FmHA” and adding “RD” in its place; and
  - b. In paragraph (b), removing “FmHA or its successor agency under Public

Law 103–354” and adding “Rural Development” in its place.

### PART 1950—GENERAL

#### Subpart C—Servicing Accounts of Borrowers Entering the Armed Forces

- 243. The authority citation for subpart C of part 1950 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

#### § 1950.101 [Amended]

- 244. Amend § 1950.101 by removing “Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354)” and adding “Rural Development” in its place and by removing “FmHA or its successor agency under Public Law 103–354 regulations” and adding “Rural Development regulations” in its place.

#### § 1950.102 [Amended]

- 245. Amend § 1950.102(a) by removing “FmHA or its successor agency under Public Law 103–354 will” and adding “Rural Development will” in its place and by removing “policy FmHA or its successor agency under Public Law 103–354” and adding “policy of Rural Development” in its place.

#### § 1950.103 [Amended]

- 246. Amend § 1950.103 by:
  - a. In the section heading, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - b. In paragraph (a)(1), removing “FmHA or its successor agency under Public Law 103–354 loan” and adding “government loan” in its place and removing “borrower and FmHA or its successor agency under Public Law 103–354” and adding “borrower and Rural Development” in its place; and
  - c. In paragraph (c), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place and removing “Address or Name” and adding “Address, Name, Case Number, or Loan Number” in its place.

#### § 1950.104 [Amended]

- 247. Amend § 1950.104 by:
  - a. In the section heading, introductory text, and paragraph (a), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - b. In paragraph (b) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;

- c. In paragraph (b)(1), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and
- d. In paragraph (e), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

#### § 1950.105 [Amended]

- 248. Amend § 1950.105(b) by removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

### PART 1951—SERVICING AND COLLECTIONS

- 249. The authority citation for part 1951 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

#### Subpart A—Account Servicing Policies

#### § 1951.2 [Amended]

- 250. Amend § 1951.2 by removing “Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354)” and adding “Agency” in its place.

#### § 1951.3 [Amended]

- 251. Amend § 1951.3 by removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place.

#### § 1951.7 [Amended]

- 252. Amend § 1951.7 by:
  - a. In paragraph (b)(1), removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place;
  - b. In paragraphs (b)(4)(i), (c), and (d)(2), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place;
  - c. In paragraph (e), removing “FmHA or its successor agency under Public Law 103–354 borrowers will be maintained in the County Office on Forms FmHA or its successor agency under Public Law 103–354 1905–1, FmHA or its successor agency under Public Law 103–354 1905–5, FmHA or its successor agency under Public Law 103–354 1905–10, “Management System Card-Association,” as provided in FmHA or its successor agency under Public Law 103–354 Instruction 1905–A (available in any FmHA or its successor agency under Public Law 103–354 office)” and adding “Agency borrowers will be maintained in the County Office as provided in RD Instruction 1905–A

(available in any Agency office)” in its place;

■ d. In paragraph (h) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place;

■ e. In paragraphs (h)(1) and (h)(2), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place; and

■ f. In paragraph (h)(3):

■ i. Removing “Forms FmHA or its successor agency under Public Law 103–354” and adding “Forms RD” in its place;

■ ii. Removing “copy(ies) of Form FmHA or its successor agency under Public Law 103–354” and adding “copy(ies) of Form RD” in its place; and

■ iii. Removing “; a copy of Form FmHA or its successor agency under Public Law 103–354 1951–58, “Basis for Loan Account Payment Application for Farmer Program Loans;”.

#### § 1951.8 [Amended]

■ 253. Amend § 1951.8(b)(3) by removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

#### § 1951.9 [Amended]

■ 254. Amend § 1951.9 by:

■ a. In the section heading, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;

■ b. In the introductory text, removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ c. In paragraph (a)(1) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place;

■ d. In paragraph (a)(1)(i), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place; and

■ e. In paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(iv), (a)(2), and (b), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Agency” in its place.

#### § 1951.10 [Amended]

■ 255. Amend § 1951.10 by:

■ a. In the introductory text, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place; and

■ b. In paragraph (a)(6), removing “FmHA or its successor agency under Public Law 103–354” and adding “Agency” in its place.

#### § 1951.11 [Amended]

■ 256. Amend § 1951.11 by:

■ a. In paragraph (d)(1)(i), removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place; and

■ b. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place.

#### § 1951.12 [Amended]

■ 257. Amend § 1951.12 by:

■ a. In paragraph (a), removing “FmHA or its successor agency under Public Law 103–354 loan” and adding “Agency loan” in its place;

■ b. In paragraph (b), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place; and

■ c. In paragraphs (c)(1) and (c)(2), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place.

#### § 1951.14 [Amended]

■ 258. Amend § 1951.14(b) by removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

#### § 1951.25 [Amended]

■ 259. Amend § 1951.25(b)(2)(ii) by removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

■ 260. Revise Exhibit A to subpart A of 7 CFR part 1951 to read as follows:

#### Exhibit A to Subpart A of Part 1951— Notice to Agency Borrowers

Agency borrowers with community program loan types made under the Consolidated Farm and Rural Development Act may request a loan summary statement which shows the calendar year account activity for each loan. Interested borrowers may request these statements through their local Rural Development office.

#### Subpart D—Final Payment of Loans

##### § 1951.153 [Amended]

■ 261. Amend § 1951.153(b) by removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

##### § 1951.154 [Amended]

■ 262. Amend § 1951.154 by removing in paragraph (a) “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place and by removing in paragraph (c) “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

##### § 1951.155 [Amended]

■ 263. Amend § 1951.155 by:

■ a. In paragraph (b):

■ i. Removing “FmHA or its successor agency under Public Law 103–354 will” and adding “RD will” in its place;

■ ii. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by RD” in its place; and

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place;

■ b. In paragraph (c) introductory text and paragraph (c)(1), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place;

■ c. In paragraph (c)(2):

■ i. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by RD” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354 will” wherever it occurs and adding “RD will” in its place;

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 is” and adding “RD is” in its place; and

■ iv. Removing “FmHA or its successor agency under Public Law 103–354 can” and adding “RD can” in its place;

■ d. In paragraph (g), removing “FmHA or its successor agency under Public Law 103–354 may” and adding “RD may” in its place and removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place; and

■ e. In paragraph (i), removing “FmHA or its successor agency under Public Law 103–354 will” and adding “RD will” in its place and removing “by FmHA or its successor agency under Public Law 103–354” and adding “by RD” in its place.

#### Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

##### § 1951.201 [Amended]

■ 264. Amend § 1951.201 by removing “loans for Grazing and other shift-inland-use projects;” and “Association Irrigation and Drainage loans;” and by removing “and the Farm Service Agency” and adding “and the Rural Housing Service” in its place.

##### § 1951.202 [Amended]

■ 265. Amend § 1951.202 by removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place and by removing “by FmHA or its successor agency under Public Law 103–354” and adding “by Rural Development” in its place.

**§ 1951.203 [Amended]**

■ 266. Amend § 1951.203(h) by removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1951.207 [Amended]**

■ 267. Amend § 1951.207 by removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

**§§ 1951.211, 1951.215, and 1951.216 [Amended]**

■ 268. Remove “FmHA or its successor agency under Public Law 103–354” wherever it occurs and add “Rural Development” in its place in the following places:

- a. Section 1951.211;
- b. Section 1951.215 introductory text and (a)(2); and
- c. Section 1951.216.

**§ 1951.220 [Amended]**

■ 269. Amend § 1951.220 by:

- a. In paragraph (a)(2), removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place;
- b. In paragraph (a)(3), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place;
- c. In paragraph (b) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- d. In paragraph (b)(1), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;
- e. In paragraph (b)(2), removing “Forms FmHA or its successor agency under Public Law 103–354 1951–9” and “Form FmHA or its successor agency under Public Law 103–354 1951–9” and adding “Form RD 1951–9” in their place;
- f. In paragraph (b)(3), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;
- g. In paragraph (c) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- h. In paragraph (c)(2), removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place;
- i. In paragraph (d), removing “FmHA or its successor agency under Public

Law 103–354’s” and adding “Rural Development’s” in its place;

■ j. In paragraph (e)(2)(v), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;

■ k. In paragraph (f), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place and removing “FmHA or its successor agency under Public Law 103–354 as” and adding “Rural Development as” in its place; and

■ l. In paragraphs (g) and (h)(3), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1951.221 [Amended]**

■ 270. Amend § 1951.221 by:

- a. In paragraph (a)(2) introductory text, removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place;
- b. In paragraphs (a)(2)(i)(A), (a)(2)(i)(B), and (a)(2)(i)(C), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- c. In paragraph (a)(3) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place; and
- d. In paragraph (a)(3)(i), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1951.222 [Amended]**

■ 271. Amend § 1951.222 by:

- a. In the introductory text and in paragraphs (a)(2), (a)(3), (a)(7), and (a)(9), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;
- b. In paragraphs (c)(1) and (c)(3), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;
- c. In paragraph (c)(7), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and
- d. In paragraph (d), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place.

**§ 1951.223 [Amended]**

■ 272. Amend § 1951.223 by:

■ a. In paragraph (b)(1), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;

■ b. In paragraph (c)(2), removing “FmHA or its successor agency under Public Law 103–354’s security” and adding “Rural Development’s security” in its place and removing “FmHA or its successor agency under Public Law 103–354 approval” and adding “Rural Development approval” in its place; and

■ c. In paragraphs (c)(3), (c)(4) introductory text, (c)(4)(i), (c)(4)(ii), and (c)(4)(iv), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

**§ 1951.224 [Amended]**

■ 273. Amend § 1951.224 by:

- a. In paragraphs (a)(1)(iii), (a)(1)(v), and (a)(2)(v), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;
- b. In paragraphs (b)(1) and (b)(2), removing “to FmHA or its successor agency under Public Law 103–354” and adding “to Rural Development” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- c. In paragraph (b)(3), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place; and
- d. In paragraph (b)(6), removing “FmHA or its successor agency under Public Law 103–354 consent” and adding “Rural Development consent” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- e. In paragraph (c), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and
- f. In paragraph (e)(2), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1951.225 [Amended]**

■ 274. Amend § 1951.225 by removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

**§ 1951.226 [Amended]**

■ 275. Amend § 1951.226 by:

- a. In paragraph (a)(3), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- b. In paragraph (b)(3), removing “FmHA or its successor agency under

Public Law 103–354’s” and adding “Rural Development’s” in its place;

- c. In paragraph (b)(4)(i), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- d. In paragraph (b)(4)(ii), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- e. In paragraph (b)(5)(i), removing “on FmHA or its successor agency under Public Law 103–354” and adding “on Rural Development” in its place and removing “FmHA or its successor agency under Public Law 103–354’s advantage” and adding “Rural Development’s advantage” in its place;
- f. In paragraphs (b)(5)(ii) and (b)(6), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- g. In paragraph (c)(1)(i), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- h. In paragraphs (c)(1)(iv) through (vii), (c)(2)(i), and (c)(2)(ii), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;
- i. In paragraph (c)(3), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- j. In paragraph (d)(1) “an FmHA or its successor agency under Public Law 103–354” and adding “a Rural Development” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- k. In paragraph (d)(2) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and
- l. In paragraph (d)(2)(ii), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place.

#### § 1951.227 [Amended]

- 276. Amend § 1951.227 by:
  - a. In the introductory text, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place; and
  - b. In paragraph (c):
    - i. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place; and
    - ii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place.

#### § 1951.230 [Amended]

- 277. Amend § 1951.230 by:
  - a. In paragraph (a) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - b. In paragraph (a)(2), removing “FmHA or its successor agency under Public Law 103–354’s security” and adding “Rural Development’s security” in its place and removing “FmHA or its successor agency under Public Law 103–354 program” and adding “Rural Development program” in its place;
  - c. In paragraphs (a)(3), (a)(4), and (a)(6), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - d. In paragraph (a)(7), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “to FmHA or its successor agency under Public Law 103–354” and adding “to Rural Development” in its place;
  - e. In paragraph (a)(8), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;
  - f. In paragraph (a)(9), removing “FmHA or its successor agency under Public Law 103–354 debt” and adding “Rural Development debt” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;
  - g. In paragraph (a)(12), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;
  - h. In paragraphs (b) introductory text and (b)(5), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - i. In paragraph (c) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - j. In paragraph (c)(1), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
  - k. In paragraph (c)(5), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - l. In paragraph (d) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - m. In paragraph (d)(1)(i):

- i. Removing “non-FmHA or its successor agency under Public Law 103–354 personnel” and adding “non-Rural Development personnel” in its place;
- ii. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place; and
- iii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place;
- n. In paragraph (d)(1)(ii), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- o. In paragraph (d)(2), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- p. In paragraph (d)(5), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- q. In paragraphs (e)(1) and (e)(2)(ii), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- r. In paragraph (f)(1), removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” wherever it occurs and adding “Rural Development office” in its place;
- s. In paragraph (f)(5), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “approval by FmHA or its successor agency under Public Law 103–354” and adding “approval by Rural Development” in its place;
- t. In paragraphs (f)(6), (f)(7)(i), and (f)(7)(ii), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- u. In paragraph (f)(8), removing “an FmHA or its successor agency under Public Law 103–354” and adding “a Rural Development” in its place;
- v. In paragraph (f)(9), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- w. In paragraph (f)(11), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- x. In paragraphs (f)(12) and (f)(14), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and
- y. In paragraph (f)(15), removing “Form FmHA or its successor agency

under Public Law 103-354” and adding “Form RD” in its place.

#### § 1951.231 [Amended]

■ 278. Amend § 1951.231 by:

- a. In paragraphs (a)(1)(i), (v), and (vii), removing “FmHA or its successor agency under Public Law 103-354” wherever it occurs and adding “RD” in its place;
- b. In paragraph (a)(1)(vi), removing “FmHA or its successor agency under Public Law 103-354 office” and adding “Rural Development office” in its place;
- c. In paragraphs (a)(2), (3), and (4), removing “FmHA or its successor agency under Public Law 103-354” wherever it occurs and adding “RD” in its place;
- d. In paragraph (b)(2), removing “FmHA or its successor agency under Public Law 103-354” wherever it occurs and adding “Rural Development” in its place; and
- e. In paragraphs (c)(3) and (4), removing “FmHA or its successor agency under Public Law 103-354” wherever it occurs and adding “RD” in its place;
- f. In paragraph (d) introductory text, removing “FmHA or its successor agency under Public Law 103-354” wherever it occurs and adding “RD” in its place; and
- g. In paragraph (d)(1), removing “FmHA or its successor agency under Public Law 103-354’s” and adding “Rural Development’s” in its place and removing “debt to FmHA or its successor agency under Public Law 103-354” and adding “debt to Rural Development” in its place.

#### §§ 1951.232, 1951.240, and 1951.241 [Amended]

- 279. Remove “FmHA or its successor agency under Public Law 103-354” wherever it occurs and adding “Rural Development” in its place in the following places:
  - a. Section 1951.232;
  - b. Section 1951.240; and
  - c. Section 1951.241.

#### Subpart F—Analyzing Credit Needs and Graduation of Borrowers

##### § 1951.264 [Amended]

■ 280. Amend § 1951.264(a)(2) by removing “1951-F-5” and adding “1951-5” in its place.

##### Exhibit B to Subpart F [Amended]

■ 281. In Exhibit B to subpart F, paragraph 15, removing “Form FmHA or its successor agency under Public Law 103-354” and adding “Form RD” in its place and removing “by FmHA or its successor agency under Public Law

103-354” and adding “by Rural Development” in its place.

#### Subpart R—Rural Development Loan Servicing

##### § 1951.851 [Amended]

■ 282. Amend § 1951.851 by:

- a. In paragraph (a), removing “Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354)” and adding “Rural Development” in its place; and
- b. In paragraph (d), removing “FmHA or its successor agency under Public Law 103-354” and adding “Rural Development” in its place.

##### § 1951.852 [Amended]

■ 283. Amend § 1951.852(a)(1), (a)(2), and (a)(9) by removing “FmHA or its successor agency under Public Law 103-354” wherever it occurs and adding “Rural Development loan” in its place.

#### §§ 1951.866, 1951.883, and 1951.896 [Amended]

- 284. Remove “FmHA or its successor agency under Public Law 103-354” wherever it occurs and adding “Rural Development” in its place in the following places:
  - a. Section 1951.866;
  - b. Section 1951.883; and
  - c. Section 1951.896.

##### § 1951.881 [Amended]

- 285. Amend § 1951.881 by:
  - a. In paragraph (b), removing “FmHA or its successor agency under Public Law 103-354” and adding “Rural Development” in its place;
  - b. In paragraph (d):
    - i. Removing “by the FmHA or its successor agency under Public Law 103-354” and adding “by the Rural Development” in its place;
    - ii. Removing “the FmHA or its successor agency under Public Law 103-354 Administrator” and adding “the Rural Development Under Secretary” in its place; and
    - c. In paragraph (e)(1), removing “FmHA or its successor agency under Public Law 103-354” and adding “Rural Development” in its place.

##### § 1951.884 [Amended]

■ 286. Amend § 1951.884 by removing “FmHA or its successor agency under Public Law 103-354” and adding “Rural Development” in its place.

##### § 1951.885 [Amended]

■ 287. Amend § 1951.885 by:
 

- a. In the introductory text and in paragraphs (a)(2), and (b), removing “FmHA or its successor agency under Public Law 103-354” wherever it occurs

and adding “Rural Development” in its place;

- b. In paragraph (c):
  - i. Removing “expose FmHA or its successor agency under Public Law 103-354” and adding “expose Rural Development” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103-354’s” and adding “Rural Development’s” in its place; and
  - iii. Removing “which FmHA or its successor agency under Public Law 103-354” and adding “which Rural Development” in its place; and
- c. In paragraph (d), removing “FmHA or its successor agency under Public Law 103-354” and adding “Rural Development” in its place.

##### § 1951.889 [Amended]

- 288. Amend § 1951.889 by:
  - a. In paragraph (a), removing “FmHA or its successor agency under Public Law 103-354” and adding “Rural Development” in its place;
  - b. In paragraph (c), removing “FmHA or its successor agency under Public Law 103-354’s” and adding “Rural Development’s” in its place;
  - c. In paragraph (d), removing “FmHA or its successor agency under Public Law 103-354” wherever it occurs and adding “Rural Development” in its place; and
  - d. In paragraph (e), removing “FmHA or its successor agency under Public Law 103-354 case number” and adding “Rural Development case number” in its place.

##### § 1951.890 [Amended]

- 289. Amend § 1951.890 by:
  - a. Removing “FmHA or its successor agency under Public Law 103-354 will” and adding “Rural Development will” in its place;
  - b. Removing “FmHA or its successor agency under Public Law 103-354 Instruction” and adding “RD Instruction” in its place;
  - c. Removing “FmHA or its successor agency under Public Law 103-354 office” and adding “Rural Development office” in its place;
  - d. Removing “FmHA or its successor agency under Public Law 103-354 and” and adding “Rural Development and” in its place; and
  - e. Removing “FmHA or its successor agency under Public Law 103-354 staff” and adding “Rural Development staff” in its place.

##### § 1951.891 [Amended]

- 290. Amend § 1951.891 by:
  - a. In paragraph (a) introductory text:
    - i. Removing “that FmHA or its successor agency under Public Law



103–354” and adding “that Rural Development” in its place;

■ ii. Removing “Should the FmHA or its successor agency under Public Law 103–354” and adding “Should Rural Development” in its place;

■ iii. Removing “interests of FmHA or its successor agency under Public Law 103–354” and adding “interests of Rural Development” in its place; and

■ iv. Removing “FmHA or its successor agency under Public Law 103–354 may” and adding “Rural Development may” in its place;

■ b. in paragraph (a)(2), removing “as FmHA or its successor agency under Public Law 103–354” and adding “as Rural Development” in its place and removing “by the FmHA or its successor agency under Public Law 103–354” and adding “by Rural Development” in its place; and

■ c. In paragraphs (a)(3), (e), and (f), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

## PART 1955—PROPERTY MANAGEMENT

■ 291. The authority citation for part 1955 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

### Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

#### § 1955.2 [Amended]

■ 292. Amend § 1955.2 by removing “property to FmHA or its successor agency under Public Law 103–354” and adding “property to Rural Development” in its place and removing “conveyance to FmHA or its successor agency under Public Law 103–354” and adding “conveyance to Rural Development and” in its place.

#### § 1955.3 [Amended]

■ 293. Amend § 1955.3 by:

■ a. In the definition of ‘CONACT or CONACT property’, removing “FmHA or its successor agency under Public Law 103–354” and adding “the government” in its place;

■ b. In the definition of ‘Government’, removing “Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354),” and adding “RBS, RHS, and RUS of the” in its place and removing “used interchangeably herein with “FmHA or its successor agency under Public Law 103–354.”; and

■ c. In the definition of ‘Prior lien’, removing “FmHA or its successor agency under Public Law 103–354 security” and adding “Rural Development security” in its place and removing “FmHA or its successor agency under Public Law 103–354’s ” and adding “Rural Development’s” in its place.

#### § 1955.5 [Amended]

■ 294. Amend § 1955.5 by:

■ a. In paragraphs (a) and (c)(2), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and

■ b. In paragraph (d), removing “(available in any FmHA or its successor agency under Public Law 103–354 office)” and removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

#### § 1955.10 [Amended]

■ 295. Amend § 1955.10 by:

■ a. Removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place in the following places:

■ i. The introductory text;

■ ii. The heading of paragraph (c);

■ iii. Paragraph (f) introductory text;

■ iv. Paragraphs (f)(1) introductory text, (f)(1)(i)(A), (f)(1)(i)(B), (f)(1)(ii), and (f)(1)(iii);

■ v. Paragraph (g)(1); and

■ vi. Paragraphs (h)(1), (h)(2), and (h)(5);

■ b. In paragraph (a)(2)(ii), removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place;

■ c. In paragraph (c)(2):

■ i. Removing “FmHA or its successor agency under Public Law 103–354 liens” and adding “Rural Development liens” in its place;

■ ii. Removing “made by FmHA or its successor agency under Public Law 103–354” and adding “made by Rural Development” in its place;

■ iii. Removing “An FmHA or its successor agency under Public Law 103–354 official” and adding “A Rural Development official” in its place;

■ d. In paragraphs (d)(1), (d)(2), and (d)(3), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place;

■ e. In paragraph (e):

■ i. Removing “by FmHA or its successor agency under Public Law

103–354” and adding “by Rural Development” in its place;

■ ii. Removing “qualified FmHA or its successor agency under Public Law 103–354” and adding “qualified Rural Development” in its place;

■ iii. Removing “outside FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “outside Rural Development” in its place; and

■ iv. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place; and

■ f. In paragraphs (h)(4)(i) and (h)(4)(ii), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place.

#### §§ 1955.11 and 1955.12 [Amended]

■ 296. Amend §§ 1955.11 and 1955.12 by removing in their section headings and wherever else it occurs “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

#### § 1955.15 [Amended]

■ 297. Amend § 1955.15 by:

■ a. Removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place in the following places:

■ i. The introductory text;

■ ii. Paragraph (a)(2)(i);

■ iii. Paragraph (d)(2)(v);

■ iv. Paragraph (d)(3)(i)(A);

■ v. Paragraph (d)(6)(i) introductory text;

■ vi. Paragraphs (f)(1)(i)(C) and (D),

■ vii. Paragraphs (f)(5)(i)(A) and (B);

■ viii. Paragraph (f)(5)(ii); and

■ ix. Paragraphs (f)(7)(i) and (ii).

■ b. In paragraph (b) introductory text:

■ i. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place;

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place;

■ iv. Removing “Forms FmHA or its successor agency under Public Law 103–354” and adding “Forms RD” in its place; and

■ v. Removing “FmHA or its successor agency under Public Law 103–354 loan servicing” and adding “Rural Development loan servicing” in its place;

■ c. In paragraph (b)(3), removing “FmHA or its successor agency under

Public Law 103-354" and adding "the government" in its place;

■ d. In paragraph (d)(1):

■ i. Removing "whether FmHA or its successor agency under Public Law 103-354" wherever it occurs and adding "whether Rural Development" in its place;

■ ii. Removing "FmHA or its successor agency under Public Law 103-354 loan(s)" and adding "Rural Development loan(s)" in its place; and

■ iii. Removing "FmHA or its successor agency under Public Law 103-354's position" and adding "Rural Development's position" in its place;

■ e. In paragraph (d)(2) introductory text, removing "FmHA or its successor agency under Public Law 103-354 Guide Letters" and adding "Guide Letters" in its place and removing "FmHA or its successor agency under Public Law 103-354 Office" wherever it occurs and adding "Rural Development office" in its place;

■ f. In paragraphs (d)(4), (e)(2), and (f)(1)(ii), removing "FmHA or its successor agency under Public Law 103-354" and adding "RD" in its place;

■ g. In paragraph (f)(3), removing "FmHA or its successor agency under Public Law 103-354 Instruction" and adding "RD Instruction" in its place and removing "FmHA or its successor agency under Public Law 103-354 office" and adding "Rural Development office" in its place;

■ h. In paragraph (f)(4), removing "FmHA or its successor agency under Public Law 103-354" and adding "RD" in its place;

■ i. In paragraph (f)(6):

■ i. Removing "FmHA or its successor agency under Public Law 103-354's" wherever it occurs and adding "Rural Development's" in its place;

■ ii. Removing "an FmHA or its successor agency under Public Law 103-354 borrower" and adding "a Rural Development borrower" in its place;

■ iii. Removing "FmHA or its successor agency under Public Law 103-354 debt" and adding "Rural Development debt" in its place;

■ iv. Removing "FmHA or its successor agency under Public Law 103-354 determines" and adding "Rural Development determines" in its place;

■ v. Removing "an FmHA or its successor agency under Public Law 103-354 appraiser" and adding "a Rural Development appraiser" in its place;

■ vi. Removing "outside FmHA or its successor agency under Public Law 103-354" and adding "outside Rural Development" in its place;

■ vii. Removing "FmHA or its successor agency under Public Law 103-354 Instruction" and adding "RD Instruction" in its place; and

■ viii. Removing "FmHA or its successor agency under Public Law 103-354 office" and adding "Rural Development office" in its place; and

■ j. In paragraph (f)(7) introductory text, removing "an FmHA or its successor agency under Public Law 103-354 employee" wherever it occurs and adding "a Rural Development employee" in its place.

#### § 1955.18 [Amended]

■ 298. Amend § 1955.18 by:

■ a. In paragraph (e)(1) introductory text, removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place;

■ b. In paragraph (e)(1)(ii), removing "FmHA or its successor agency under Public Law 103-354's" and adding "Rural Development's" in its place.

■ c. In paragraph (e)(2) introductory text, removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place;

■ d. In paragraph (e)(2)(ii), removing "FmHA or its successor agency under Public Law 103-354's" and adding "Rural Development's" in its place;

■ e. In paragraph (e)(3), removing "FmHA or its successor agency under Public Law 103-354" wherever it occurs and adding "Rural Development" in its place; and

■ f. In paragraph (e)(4) introductory text, removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place.

#### § 1955.20 [Amended]

■ 299. Amend § 1955.20 by:

■ a. In the introductory text, removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place;

■ b. In paragraph (a)(2), removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place;

■ c. In paragraph (a)(5), removing "FmHA or its successor agency under Public Law 103-354" and adding "RD" in its place;

■ d. In paragraph (b) introductory text, removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place;

■ e. In paragraph (b)(1), removing "FmHA or its successor agency under Public Law 103-354" and adding "RD" in its place;

■ f. In paragraph (b)(2):

■ i. Removing "chattels to FmHA or its successor agency under Public Law 103-354" and adding "chattels to Rural Development" in its place;

■ ii. Removing "FmHA or its successor agency under Public Law 103-354 office" and adding "Rural Development office" in its place; and

■ iii. Removing "Form FmHA or its successor agency under Public Law 103-354" wherever it occurs and adding "Form RD" in its place;

■ g. In paragraph (b)(4), removing "FmHA or its successor agency under Public Law 103-354" and adding "RD" in its place;

■ h. In paragraph (c)(1), removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place;

■ i. In paragraph (d):

■ i. Removing "Form FmHA or its successor agency under Public Law 103-354" and adding "Form RD" in its place;

■ ii. Removing "outside FmHA or its successor agency under Public Law 103-354" and adding "outside Rural Development" in its place;

■ iii. Removing "FmHA or its successor agency under Public Law 103-354 Instruction" and adding "RD Instruction" in its place; and

■ iv. Removing "FmHA or its successor agency under Public Law 103-354 office" and adding "Rural Development office" in its place; and

■ j. In paragraph (f)(1) introductory text, removing "an FmHA or its successor agency under Public Law 103-354" and adding "a Rural Development" in its place;

■ k. In paragraphs (f)(1)(ii), and (f)(2)(i), (ii), and (iii), removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place;

■ l. In paragraph (f)(2)(v), removing "FmHA or its successor agency under Public Law 103-354" and adding "RD" in its place;

■ m. In paragraph (g), removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place; and

■ n. In paragraph (h), removing "FmHA or its successor agency under Public Law 103-354" and adding "RD" in its place;

#### § 1955.22 [Amended]

■ 300. Amend § 1955.22 by:

■ a. Removing "FmHA or its successor agency under Public Law 103-354 officials" and adding "Rural Development officials" in its place;

■ b. Removing "FmHA or its successor agency under Public Law 103-354 Instruction" and adding "RD instruction" in its place; and

■ c. Removing "FmHA or its successor agency under Public Law 103-354 office" and adding "Rural Development office" in its place.

**Subpart B—Management of Property****§ 1955.52 [Amended]**

■ 301. Amend § 1955.52 by removing “by FmHA or its successor agency under Public Law 103–354” and adding “by the respective Agency” in its place and by removing “Generally, FmHA or its successor agency under Public Law 103–354” and adding “Generally, RHS” in its place.

**§ 1955.53 [Amended]**

■ 302. Amend § 1955.53 as follows:

- a. In the definition of ‘CONACT or CONACT property’, remove “FmHA or its successor agency under Public Law 103–354” and add “the respective Agency” in its place;
- b. In the definition of ‘Custodial property’, remove “an FmHA or its successor agency under Public Law 103–354 loan” and add “a Rural Development loan” in its place and remove “FmHA or its successor agency under Public Law 103–354 loan has taken” and add “the respective Agency has taken” in its place; and
- c. In the definition of ‘Government’, remove “FmHA or its successor agency under Public Law 103–354” and add “the respective Agency” in its place.

**§ 1955.55 [Amended]**

■ 303. Amend § 1955.55 by:

- a. Removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place in the following places:
  - i. Paragraph (b) introductory text;
  - ii. Paragraph (b)(2) introductory text;
  - iii. Paragraphs (c) introductory text and (c)(1);
  - iv. Paragraphs (f)(2)(i) and (ii), and (f)(3);
- b. In paragraph (b)(2)(iii), removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place; and
- c. In paragraph (f) introductory text:
  - i. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by Rural Development” in its place;
  - ii. Removing “through FmHA or its successor agency under Public Law 103–354” and adding “through Rural Development” in its place;
  - iii. Removing “if FmHA or its successor agency under Public Law 103–354” and adding “if Rural Development” in its place;
  - iv. Removing “FmHA or its successor agency under Public Law 103–354

Instruction” and adding “RD Instruction” in its place; and

- v. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place.

**§§ 1955.57, 1955.60, 1955.61, and 1955.82 [Amended]**

■ 304. Remove “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place in the following places:

- a. Section 1955.57;
- b. Section 1955.60;
- c. Section 1955.61; and
- d. Section 1955.82.

**§ 1955.62 [Amended]**

■ 305. Amend § 1955.62 by:

- a. In the introductory text, removing “an FmHA or its successor agency under Public Law 103–354 lien” and adding “a Rural Development lien” in its place and removing “FmHA or its successor agency under Public Law 103–354 official” and adding “Rural Development official” in its place;
- b. In paragraphs (a)(1) and (a)(2), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place;
- c. In paragraph (b)(1)(ii), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;
- d. In paragraph (b)(2), removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place; and
- e. In paragraph (c), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;

**§ 1955.65 [Amended]**

■ 306. Amend § 1955.65 by:

- a. In paragraph (b), removing “FmHA or its successor agency under Public Law 103–354”;
- b. In paragraph (c) introductory text, removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place;
- c. In paragraph (c)(1):
  - i. Removing “which FmHA or its successor agency under Public Law 103–354” and adding “which Rural Development” in its place;

- ii. Removing “FmHA or its successor agency under Public Law 103–354’s approval” and adding “Rural Development’s approval” in its place;
- iii. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place; and
- iv. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place; and
- d. In paragraphs (c)(2)(i), (ii), and (iii), removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place; and
- e. In paragraph (c)(4):
  - i. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” wherever it occurs and adding “RD Instruction” in its place; and
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 office” and “FmHA or its successor agency under Public Law 103–354 Office” and adding “Rural Development office” in their place.

**§ 1955.72 [Amended]**

- 307. Amend § 1955.72(a) and (b) by removing “(available in any FmHA or its successor agency under Public Law 103–354 office)”.
- 308. Amend Exhibit A to subpart B of Part 1955 by revising the heading to read as follows:

**Exhibit A to Subpart B of Part 1955—  
Memorandum of Understanding  
Between the Federal Emergency  
Management Agency and Rural  
Development**

\* \* \* \* \*

**Subpart C—Disposal of Inventory Property****§ 1955.102 [Amended]**

■ 309. Amend § 1955.102 by removing “Farmers Home Administration or its successor agency under Public Law 103–354s (FmHA or its successor agency under Public Law 103–354’s)” and adding “the applicable” in its place.

**§ 1955.103 [Amended]**

- 310. Amend § 1955.103 by:
  - a. Removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place in the following definitions:
    - i. ‘Approval official’;
    - ii. ‘Borrower’;

- iii. 'Decent, safe, and sanitary (DSS) housing';
- iv. 'Eligible terms';
- v. 'Participating broker';
- vi. 'Program terms'; and
- vii. 'Regular sale';
- b. In the definition of 'CONACT or CONACT property', removing "FmHA or its successor agency under Public Law 103-354" and adding "the respective Agency" in its place;
- c. In the definitions of 'Ineligible terms' and 'Nonprogram (NP) terms', removing "FmHA or its successor agency under Public Law 103-354's" and adding "Rural Development's" in its place;
- d. In the definition of 'Inventory property', removing "an FmHA or its successor agency under Public Law 103-354 loan" and adding "a Rural Development loan" in its place;
- e. In the definition of 'Nonprogram (NP) property', removing "FmHA or its successor agency under Public Law 103-354"; and
- f. Removing the definition of "Regular FmHA or its successor agency under Public Law 103-354 sale", adding a definition for 'Regular Agency sale' in alphabetical order, and revising the definitions of 'Suitable property' and 'Surplus property'. The revisions read as follows:

#### § 1955.103 Definitions.

\* \* \* \* \*

*Regular Agency sale.* Sale made by Rural Development employees or real estate brokers other than by sealed bid, auction, or negotiation.

\* \* \* \* \*

*Suitable property.* Real property that could be used to carry out the objectives of Rural Development's loan programs with financing provided through that program.

*Surplus property.* Property that cannot be used to carry out the objectives of financing available through the applicable loan program.

#### §§ 1955.104, 1955.112, 1955.113, 1955.121, 1955.128, 1955.132, 1955.134, 1955.136, and 1955.150 [Amended]

- 311. Remove "FmHA or its successor agency under Public Law 103-354" wherever it occurs and adding "Rural Development" in its place in the following places:
  - a. Section 1955.104;
  - b. Section 1955.112;
  - c. Section 1955.113;
  - d. Section 1955.121;
  - e. Section 1955.128;
  - f. Section 1955.132;
  - g. Section 1955.134;
  - h. Section 1955.136(a)(2); and
  - i. Section 1955.150.

#### § 1955.105 [Amended]

- 312. Amend § 1955.105 by:
  - a. In paragraph (b):
    - i. Removing "FmHA or its successor agency under Public Law 103-354 office" and adding "Rural Development office" in its place;
    - ii. Removing "Form FmHA or its successor agency under Public Law 103-354" and adding "Form RD" in its place; and
    - iii. Removing "FmHA or its successor agency under Public Law 103-354 Services" and adding "RD Services" in its place; and
  - b. In paragraphs (c) introductory text, (c)(1), (c)(3), and (d), removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place.

#### § 1955.109 [Amended]

- 313. Amend § 1955.109 by:
  - a. In paragraph (a), removing the second and third sentences; and
  - b. In paragraphs (g) and (j), removing "FmHA or its successor agency under Public Law 103-354" wherever it occurs and adding "RD" in its place.

#### § 1955.114 [Amended]

- 314. Amend § 1955.114 by:
  - a. In paragraphs (a) introductory text and (a)(1)(v), removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place;
  - b. In paragraph (a)(2), removing "Form FmHA or its successor agency under Public Law 103-354" and adding "Form RD" in its place and removing "unless FmHA or its successor agency under Public Law 103-354" and adding "unless Rural Development" in its place;
  - c. In paragraph (a)(3)(ii), removing "FmHA or its successor agency under Public Law 103-354 Instruction" and adding "RD Instruction" in its place and removing "FmHA or its successor agency under Public Law 103-354 office" and adding "Rural Development office" in its place;
  - d. In paragraph (a)(4), removing "FmHA or its successor agency under Public Law 103-354" and adding Rural Development" in its place
  - e. In paragraph (b):
    - i. Removing "by FmHA or its successor agency under Public Law 103-354" and adding "by Rural Development" in its place;
    - ii. Removing "FmHA or its successor agency under Public Law 103-354 employee" and adding "Rural Development employee" in its place; and
    - iii. Removing "Form FmHA or its successor agency under Public Law

103-354" and adding "Form RD" in its place; and

- f. In paragraphs (c) introductory text and (d), removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place.

#### § 1955.115 [Amended]

- 315. Amend § 1955.115 by:
  - a. In the introductory text:
    - i. Removing "FmHA or its successor agency under Public Law 103-354 office" and adding "Rural Development office" in its place;
    - ii. Removing "Form FmHA or its successor agency under Public Law 103-354" and adding "Form RD" in its place; and
    - iii. Removing "FmHA or its successor agency under Public Law 103-354 DSS" and adding "Rural Development DSS" in its place;
  - b. In paragraph (a) introductory text, removing "FmHA or its successor agency under Public Law 103-35" and adding "Rural Development" in its place;
  - c. In paragraph (a)(2):
    - i. Removing "FmHA or its successor agency under Public Law 103-354 will" and adding "Rural Development will" in its place;
    - ii. Removing "FmHA or its successor agency under Public Law 103-354 Instruction" and adding "RD Instruction" in its place; and
    - iii. Removing "FmHA or its successor agency under Public Law 103-354 office" and adding "Rural Development office" in its place; and
  - d. In paragraphs (a)(3), and (b), removing "FmHA or its successor agency under Public Law 103-35" and adding "Rural Development" in its place.

#### § 1955.116 [Amended]

- 316. Amend § 1955.116 by:
  - a. In paragraph (a):
    - i. Removing "Form FmHA or its successor agency under Public Law 103-354" and adding "Form RD" in its place;
    - ii. Removing "which FmHA or its successor agency under Public Law 103-354 has" and adding "which Rural Development has" in its place; and
    - iii. Removing "Contact FmHA or its successor agency under Public Law 103-354" and adding "Contact Rural Development" in its place;
  - b. In paragraph (b), removing "FmHA or its successor agency under Public Law 103-354" wherever it occurs and adding "RD" in its place;
  - c. In paragraph (c):
    - i. Removing "Form FmHA or its successor agency under Public Law

103-354" and adding "Form RD" in its place;

■ ii. Removing "through Farmers Home Administration or its successor agency under Public Law 103-354" and adding "through Rural Development" in its place; and

■ iii. Removing "the Farmers Home Administration or its successor agency under Public Law 103-354" wherever it occurs and adding "Rural Development" in its place; and

■ d. In paragraph (d), removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place.

#### § 1955.117 [Amended]

■ 317. Amend § 1955.117 by:

■ a. In paragraph (a), removing "Form FmHA or its successor agency under Public Law 103-354" wherever it occurs and adding "Form RD" in its place and removing "FmHA or its successor agency under Public Law 103-354 sales" and adding "Rural Development sales" in its place;

■ b. In paragraph (b), removing "The FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place;

■ c. In paragraph (c), removing "FmHA or its successor agency under Public Law 103-354" and adding "RD" in its place; and

■ d. In paragraphs (e) and (f), removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place.

#### § 1955.118 [Amended]

■ 318. Amend § 1955.118 by:

■ a. In paragraphs (b)(1) and (b)(11), removing "FmHA or its successor agency under Public Law 103-354" wherever it occurs and adding "RD" in its place;

■ b. In paragraph (b)(5), removing "FmHA or its successor agency under Public Law 103-354 Instruction" and adding "RD Instruction" in its place and removing "FmHA or its successor agency under Public Law 103-354 office" and adding "Rural Development office" in its place; and

■ c. In paragraphs (b)(7) and (b)(8)(ii), removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place.

#### § 1955.119 [Amended]

■ 319. Amend § 1955.119 by:

■ a. In paragraph (a), removing "FmHA or its successor agency under Public Law 103-354 will" wherever it occurs and adding "Rural Development will" in its place and removing "Form FmHA or its successor agency under Public

Law 103-354" and adding "Form RD" in its place; and

■ b. In paragraph (c):

■ i. Removing "FmHA or its successor agency under Public Law 103-354 will" and adding "Rural Development will" in its place;

■ ii. Removing "FmHA or its successor agency under Public Law 103-354 determines" and adding "Rural Development determines" in its place;

■ iii. Removing "Form FmHA or its successor agency under Public Law 103-354" wherever it occurs and adding "Form RD" in its place; and

■ iv. Removing "FmHA or its successor agency under Public Law 103-354's" and adding "Rural Development's" in its place.

#### § 1955.120 [Amended]

■ 320. Amend § 1955.120 by:

■ a. Removing "non-FmHA or its successor agency under Public Law 103-354" and adding "non-Rural Development" in its place;

■ b. Removing "by FmHA or its successor agency under Public Law 103-354" wherever it occurs and adding "by Rural Development" in its place;

■ c. Removing "Form FmHA or its successor agency under Public Law 103-354" and adding "Form RD" in its place; and

■ d. Removing "FmHA or its successor agency under Public Law 103-354 official" and adding "Rural Development official" in its place.

#### § 1955.122 [Amended]

■ 321. Amend § 1955.122 by:

■ a. In paragraph (a):

■ i. Removing "of the FmHA or its successor agency under Public Law 103-354" and adding "of the Rural Development" in its place;

■ ii. Removing "by FmHA or its successor agency under Public Law 103-354" and adding "by Rural Development" in its place;

■ iii. Removing "FmHA or its successor agency under Public Law 103-354 Form" and adding "Rural Development Form" in its place; and

■ iv. Removing "in FmHA or its successor agency under Public Law 103-354" and adding "in Rural Development" in its place;

■ b. In paragraph (b), removing "by FmHA or its successor agency under Public Law 103-354" and adding "by Rural Development" in its place and removing "Form FmHA or its successor agency under Public Law 103-354" and adding "Form RD" in its place;

■ c. In paragraph (c)(2), removing "FmHA or its successor agency under Public Law 103-354" and adding "Rural Development" in its place;

■ d. In paragraph (d), removing "FmHA or its successor agency under Public Law 103-354 Instruction" and adding "RD Instruction" in its place and removing "FmHA or its successor agency under Public Law 103-354 office" and adding "Rural Development office" in its place; and

■ e. In paragraph (f), removing "to FmHA or its successor agency under Public Law 103-354" and adding "to Rural Development" in its place;

■ f. In the undesignated paragraph following paragraph (f):

■ i. Removing "Form FmHA or its successor agency under Public Law 103-354" and adding "Form RD" in its place;

■ ii. Removing "FmHA or its successor agency under Public Law 103-354 Instruction" and adding "RD Instruction" in its place; and

■ iii. Removing "FmHA or its successor agency under Public Law 103-354 office" and adding "Rural Development office" in its place.

■ 322. Revise § 1955.123(a) to read as follows:

#### § 1955.123 Sale procedures (chattel).

■ (a) *Credit sales.* Although cash sales are preferred in the sale of chattel, credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high-priced chattels. Credit sales to eligible purchasers will be in accordance with the provisions of this chapter for the appropriate program for which a loan would otherwise be made including eligibility determinations. Preference will be given to a cash offer that is at least \* percent of the higher offer requiring credit. [\*Refer to exhibit B of RD Instruction 440.1 (available in any Rural Development office) for the current percentage.] Credit sales made to ineligible purchasers will require not less than a 10 percent downpayment with the remaining balance amortized over a period not to exceed 5 years. The interest rate for ineligible purchasers of C&BP chattel will be the current ineligible interest rate for C&BP property set forth in Exhibit B of RD Instruction 440.1 (available in any Rural Development office). District Directors and State Directors are authorized to approve or disapprove sale of C&BP chattel on ineligible terms in accordance with the respective type of program approval authorities in Exhibit E of Subpart A of Part 1901 of this chapter (available in any Rural Development office). For other than C&BP, credit sales to NP purchasers will be handled in accordance with Subpart J of Part 1951 of this chapter.

\* \* \* \* \*

**§ 1955.124 [Amended]**

■ 323. Amend §§ 1955.124 by removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place.

**§ 1955.127 [Amended]**

■ 324. Amend § 1955.127 by removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place and by removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place.

**§ 1955.130 [Amended]**

■ 325. Amend § 1955.130 by:

■ a. In the introductory text, removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place;

■ b. In paragraph (a)(1), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and “Rural Development” in its place;

■ c. In paragraph (a)(2), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” wherever it occurs and adding “Rural Development office” in its place;

■ d. In paragraph (b), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place;

■ e. In paragraph (c) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;

■ f. In paragraph (e) introductory text, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and “Rural Development” in its place;

■ g. In paragraph (e)(1)(ii), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

■ h. In paragraph (f)(1)(i), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;

■ i. In paragraph (f)(3):

■ i. Removing “receiving FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “receiving Rural Development” in its place;

■ ii. Removing “appropriate FmHA or its successor agency under Public Law 103–354” and adding “appropriate Rural Development” in its place; and

■ iii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place; and

■ j. In paragraph (g), removing “FmHA or its successor agency under Public Law 103–354 shall” and adding “Rural Development shall” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place.

**§ 1955.131 [Amended]**

■ 326. Amend § 1955.131 by:

■ a. In the introductory text, removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place; and

■ b. In paragraph (b):

■ i. Removing “FmHA or its successor agency under Public Law 103–354 may not” and adding “Rural Development may not” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354 official” and adding “Rural Development official” in its place; and

■ iii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place.

**§ 1955.133 [Amended]**

■ 327. Amend § 1955.133 by:

■ a. In paragraph (a), removing “if FmHA or its successor agency under Public Law 103–354” and adding “if Rural Development” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place; and

■ b. In paragraphs (b) and (c), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1955.135 [Amended]**

■ 328. Amend § 1955.135 by:

■ a. In the introductory text:

■ i. Removing “Where FmHA or its successor agency under Public Law 103–354” and adding “Where Rural Development” in its place;

■ ii. Removing “between FmHA or its successor agency under Public Law 103–354” and adding “between Rural Development” in its place;

■ iii. Removing “Forms FmHA or its successor agency under Public Law 103–354 1955–45 or FmHA or its successor agency under Public Law 103–354” and adding “Forms RD 1955–45 or RD” in its place;

■ iv. Removing “paid by FmHA or its successor agency under Public Law

103–354” wherever it occurs and adding “paid by Rural Development” in its place; and

■ v. Removing “proceeds FmHA or its successor agency under Public Law 103–354” and adding “proceeds Rural Development” in its place; and

■ b. In paragraph (a), removing “FmHA or its successor agency under Public Law 103–354 credit” and adding “Rural Development credit” in its place and removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place.

**§ 1955.138 [Amended]**

■ 329. Amend § 1955.138 by removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place.

**§ 1955.139 [Amended]**

■ 330. Amend § 1955.139 by:

■ a. In paragraph (a)(3)(iii), removing “the FmHA or its successor agency under Public Law 103–354” and adding “Rural Development’s” in its place;

■ b. In paragraph (a)(3)(iv), removing “the FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place; and

■ c. In paragraphs (a)(3)(v) and (vi), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1955.144 [Amended]**

■ 331. Amend § 1955.144(b) by removing “FmHA or its successor agency under Public Law 103–354” and “the Farmers Home Administration or its successor agency under Public Law 103–354” and adding “Rural Development” in their place.

**§ 1955.146 [Amended]**

■ 332. Amend § 1955.146(a) by:

■ a. Removing “sold by FmHA or its successor agency under Public Law 103–354” and adding “sold by Rural Development” in its place;

■ b. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” wherever it occurs and adding “RD Instruction” in its place;

■ c. Removing “FmHA or its successor agency under Public Law 103–354 office” wherever it occurs and adding “Rural Development office” in its place;

■ d. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;

■ e. Removing “Forms FmHA or its successor agency under Public Law 103–354 1955–40 or FmHA or its

successor agency under Public Law 103–354” and adding “Forms RD 1955–40 or RD” in its place;

- f. Removing “FmHA or its successor agency under Public Law 103–354 personnel” and adding “Rural Development personnel” in its place; and
- g. Removing “FmHA or its successor agency under Public Law 103–354 may contract” and adding “Rural Development may contract” in its place.

#### § 1955.147 [Amended]

- 333. Amend § 1955.147 by:
  - a. In the introductory text:
  - i. Removing “all FmHA or its successor agency under Public Law 103–354” and adding “all Rural Development” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 will” wherever it occurs and adding “Rural Development will” in its place;
  - iii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
  - iv. Removing “payable to FmHA or its successor agency under Public Law 103–354” and adding “payable to Rural Development” in its place; and
  - v. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place;
- b. In paragraph (a), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;
- c. In paragraph (b), removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place; and
- d. In paragraphs (d) and (e), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

#### PART 1956—DEBT SETTLEMENT

- 334. The authority citation for part 1956 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

#### Subpart C—Debt Settlement—Community and Business Programs

##### § 1956.102 [Amended]

- 335. Amend § 1956.102(a) by removing “the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its

successor agency under Public Law 103–354)” and adding “the government” in its place and removing “FmHA or its successor agency under Public Law 103–354 personnel” and adding “Rural Development personnel” in their place.

- 336. Revise § 1956.105(a), (f), (g), and (h) to read as follows:

##### § 1956.105 Definitions.

(a) *Settlement*. The compromise, adjustment, cancellation, or chargeoff of a debt owed to Rural Development. The term “settlement” is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

\* \* \* \* \*

(f) *Debtor*. The borrower of loan funds under any of Rural Development programs specified in § 1956.101.

(g) *Security*. All that serves as collateral for Rural Development loan(s), including, but not limited to, revenues, tax levies, municipal bonds, and real and chattel property.

(h) *Servicing official*. The Rural Development official who is primarily responsible for servicing the account.

\* \* \* \* \*

##### §§ 1956.109, 1956.110, 1956.130, 1956.138, 1956.142, and 1956.148 [Amended]

- 337. Remove “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place in the following places:
  - a. Section 1956.109(f);
  - b. Section 1956.110;
  - c. Section 1956.130;
  - d. Section 1956.138;
  - e. Section 1956.142(f); and
  - f. Section 1956.148.

##### § 1956.111 [Amended]

- 338. Amend § 1956.111 introductory text and paragraph (a) by removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

##### § 1956.112 [Amended]

- 339. Amend § 1956.112(d) by removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

##### § 1956.139 [Amended]

- 340. Amend § 1956.139 by:
  - a. In paragraph (d) introductory text:
  - i. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
  - ii. Removing “Compromise Offer—FmHA or its successor agency under Public Law 103–354” and adding

“Compromise Offer—Rural Development” in its place; and

- iii. Removing “Adjustment Offer—FmHA or its successor agency under Public Law 103–354” and adding “Adjustment Offer—Rural Development” in its place; and
- b. In paragraphs (d)(1) and (e), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

##### § 1956.143 [Amended]

- 341. Amend § 1956.143 by:
  - a. In paragraph (a),
  - i. Removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place in the following definitions:
    - A. ‘Debt writedown’;
    - B. ‘Delinquent debtor’;
    - C. ‘Eligibility’; and
    - D. ‘Operations review’; and
  - ii. Removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place in the definition of ‘Net recovery value’;
  - b. Removing “FmHA or its successor agency under Public Law 103–354 Office” wherever it occurs and adding “Rural Development office” in its place in the following places:
    - i. Paragraph (b) introductory text;
    - ii. Paragraphs (c)(1), (c)(3)(ii)(B), and (c)(3)(iv)(E)(1);
    - iii. Paragraphs (e)(1) introductory text, (e)(1)(iii), (e)(2) introductory text, and (e)(2)(ii)(A);
    - iv. Paragraphs (f)(1) and (2);
    - v. Paragraph (g)(1) introductory text; and
    - vi. Paragraph (h).
  - c. Removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place in the following places:
    - i. Paragraphs (b)(3), (b)(6), and (b)(8);
    - ii. Paragraphs (c)(3)(i)(A) and (c)(3)(ii)(C);
    - iii. Paragraphs (e)(1)(i), (e)(2)(i), and (e)(2)(ii)(B); and
    - iv. Paragraph (g)(1)(ii);
    - d. In paragraphs (b)(7) and (c)(3)(iv)(B), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place;
    - e. In paragraph (c)(1), removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place and removing “to FmHA or its successor agency under Public Law 103–354” and adding “to Rural Development” in its place;
    - f. In paragraphs (c)(3)(ii)(B) and (c)(3)(iv)(B)(1), removing “FmHA or its

successor agency under Public Law 103-354 Instruction” and adding “RD Instruction” in its place;

■ g. In paragraph (c)(3)(iv)(G)(2), removing “Form FmHA or its successor agency under Public Law 103-354” and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103-354 approval” and adding “Rural Development approval” in its place;

■ h. In paragraphs (d)(2), (f)(2), and (g)(3), removing “Form FmHA or its successor agency under Public Law 103-354” and adding “Form RD” in its place;

■ i. In paragraph (e)(1)(ii), removing “FmHA or its successor agency under Public Law 103-354’s approval” and adding “Rural Development’s approval” in its place and removing “by FmHA or its successor agency under Public Law 103-354” and adding “by Rural Development” in its place;

■ j. In paragraph (e)(2)(ii)(A):

■ i. Removing “pay FmHA or its successor agency under Public Law 103-354” and adding “pay Rural Development” in its place;

■ ii. Removing “inform FmHA or its successor agency under Public Law 103-354” and adding “inform Rural Development” in its place; and

■ iii. Removing “pay off FmHA or its successor agency under Public Law 103-354” and adding “pay off Rural Development” in its place;

■ k. In paragraph (f)(1):

■ i. Removing “FmHA or its successor agency under Public Law 103-354’s” and adding “Rural Development’s” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103-354 is” and adding “Rural Development is” in its place; and

■ iii. Removing “Form FmHA or its successor agency under Public Law 103-354” and adding “Form RD” in its place;

■ l. In paragraph (g)(1) introductory text:

■ i. Removing “FmHA or its successor agency under Public Law 103-354 becomes” and adding “Rural Development becomes” in its place; and

■ ii. Removing “FmHA or its successor agency under Public Law 103-354 will” and adding “Rural Development will” in its place; and

■ m. In paragraph (h), removing “FmHA or its successor agency under Public Law 103-354 determines” and adding “Rural Development determines” in its place.

■ 342. Revise § 1956.145 to read as follows:

**§ 1956.145 Disposition of essential Rural Development records.**

RD Instruction 2033-A (available in any Rural Development office) identifies an “essential Rural Development record” as the original of any document or record which provides evidence of indebtedness or obligation to RD and includes, but is not limited to: promissory notes, assumption agreements and valuable documents, such as bonds fully registered as to principal and interest.

(a) Essential Rural Development records evidencing debts settled by compromise, completed adjustment or cancelled with application will be returned to the debtor or to the debtors’ legal representative. The appropriate legend, such as “Satisfied by Approved Compromise,” and the date of the final action will be stamped or typed on the original document. This same information plus the date the original document is returned to the debtor will be shown on a copy to be placed in the debtor’s case folder.

(b) Essential Rural Development records evidencing debts cancelled without application will be placed in the debtor’s case folder and disposed of pursuant to RD Instruction 2033-A (available in any Rural Development office). However, if the debtor requests the document(s), they must be stamped “Satisfied by Approved Cancellation” and returned.

(c) Essential Rural Development records evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. They will be destroyed six years after chargeoff pursuant to RD Instruction 2033-A (available in any Rural Development office).

**§ 1956.147 [Amended]**

■ 343. Amend § 1956.147 by:

■ a. In paragraph (a)(1), removing “Form FmHA or its successor agency under Public Law 103-354” wherever it occurs and adding “Form RD” in its place;

■ b. In paragraph (a)(4), removing “FmHA or its successor agency under Public Law 103-354”;

■ c. In paragraph (b), removing “Form FmHA or its successor agency under Public Law 103-354” and adding “Form RD” in its place and removing “owed FmHA or its successor agency under Public Law 103-354” and adding “owed Rural Development” in its place; and

■ d. In paragraph (c), removing “FmHA or its successor agency under Public Law 103-354” and adding “Rural Development” in its place.

**PART 1957—ASSET SALES**

■ 344. The authority citation for part 1957 continues to read as follows:

**Authority:** Pub. L. 99-509, sec 2001(b)(1).

**Subpart A—Rural Housing Asset Sales**

**§ 1957.1 [Amended]**

■ 345. Amend § 1957.1 by:

■ a. Removing “Farmers Home Administration or its successor agency under Public Law 103-354” and adding “Rural Housing Service (RHS)” in its place;

■ b. Removing “FmHA or its successor agency under Public Law 103-354” wherever it occurs and adding “RHS” in its place; and

■ c. Removing “FmHA or its successor agency under Public Law 103-354’s” and adding “RHS’s” in its place.

**§§ 1957.2 and 1957.6 [Amended]**

■ 346. Amend §§ 1957.2 and 1957.6 by removing “FmHA or its successor agency under Public Law 103-354” wherever it occurs and adding “RHS” in its place.

**PART 1962—PERSONAL PROPERTY**

■ 347. The authority citation for part 1962 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

**Subpart A—Servicing and Liquidation of Chattel Security**

**§ 1962.1 [Amended]**

■ 348. Amend § 1962.1 by removing “Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354)” and adding “Rural Development” in its place.

**§ 1962.2 [Amended]**

■ 349. Amend § 1962.2 by removing “FmHA or its successor agency under Public Law 103-354’s” and adding “Rural Development” in its place.

**§ 1962.3 [Amended]**

■ 350. Amend § 1962.3 by removing “FmHA or its successor agency under Public Law 103-354” wherever it occurs and adding “Rural Development” in its place.

**§ 1962.4 [Amended]**

■ 351. Amend § 1962.4 by:

■ a. In the definition of ‘Acquired chattel property,’ removing “FmHA or its successor agency under Public Law 103-354” and adding “the government” in its place;

■ b. Removing “FmHA or its successor agency under Public Law 103-354” wherever it occurs and adding “Rural



Development” in its place in the following definitions:

- i. ‘Basic security’;
- ii. ‘Criminal action’;
- iii. ‘Default’; and
- iv. ‘Liquidation’.
- c. Removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place in the following definitions:
  - i. ‘Civil action’ and
  - ii. ‘Reposessed property’.
  - d. Removing “Farmers Home Administration or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place in the definition of ‘Normal income security’.

**§§ 1962.6, 1962.16, 1962.26, 1962.27, 1962.34, 1962.41, 1962.44, and 1962.46 [Amended]**

- 352. Remove “Form FmHA” and “Form FmHA or its successor agency under Public Law 103–354” wherever they occur and adding “Form RD” in their place in the following places:
  - a. Section 1962.6;
  - b. Section 1962.16;
  - c. Section 1962.26;
  - d. Section 1962.27(c) introductory text and (d);
  - e. Section 1962.34(b)(3);
  - f. Section 1962.41;
  - g. Section 1962.44; and
  - h. Section 1962.46.

**§ 1962.8 [Amended]**

- 353. Amend § 1962.8 by removing “protect FmHA or its successor agency under Public Law 103–354” and adding “protect Rural Development” in its place and by removing “an FmHA or its successor agency under Public Law 103–354” and adding “a Rural Development” in its place.

**§ 1962.17 [Amended]**

- 354. Amend § 1962.17 by removing “Form FmHA” wherever it occurs and adding “Form RD” in its place and by removing “The FmHA has” in paragraph (d)(2)(ii) and adding “Rural Development has” in its place.

**§ 1962.18 [Amended]**

- 355. Amend § 1962.18 by:
  - a. In paragraph (a), removing “FmHA or its successor agency under Public Law 103–354 1962.1” and adding “the applicable Agency form” in its place; and
  - b. In paragraph (b)(1), by:
    - i. Removing “Form FmHA or its successor agency under Public Law 103–354 1962–1” and adding “the applicable Agency form” in its place;
    - ii. Removing “FmHA or its successor agency under Public Law 103–354 431–2” and adding “RD 431–2” in its place; and

- iii. Removing “to FmHA or its successor agency under Public Law 103–354” and adding “to Rural Development” in its place.

**§ 1962.19 [Amended]**

- 356. Amend § 1962.19 by:
  - a. In the introductory text, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;
  - b. In paragraph (a)(1)(i), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;
  - c. In paragraph (a)(2), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place;
  - d. In paragraph (b)(1)(iii), removing “FmHA or its successor agency under Public Law 103–354 holds” and adding “Rural Development holds” in its place and removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place; and
  - e. In paragraph (b)(3), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1962.27 [Amended]**

- 357. Amend § 1962.27 by:
  - a. In paragraph (a)(4), removing “FmHA or its successor agency under Public Law 103–354 has” and adding “Rural Development has” in its place and removing “borrower non FmHA or its successor agency under Public Law 103–354” and adding “borrower nor Rural Development” in its place;
  - b. In paragraphs (c)(1) and (c)(2) “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - c. In paragraph (d), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place; and
  - d. In paragraph (e), removing “to FmHA or its successor agency under Public Law 103–354” and adding “to Rural Development” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place.

**§ 1962.29 [Amended]**

- 358. Amend § 1962.29 by:
  - a. In paragraph (a)(1):
    - i. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;
    - ii. Removing “accepted by FmHA or its successor agency under Public Law

103–354” and adding “accepted by Rural Development” in its place; and

- iii. Removing “paid by FmHA or its successor agency under Public Law 103–354, the County Supervisor may pay them as a petty purchase or as the bill of a creditor of FmHA or its successor agency under Public Law 103–354 in accordance with FmHA or its successor agency under Public Law 103–354 Instructions 2024–E, copies of which are available in any FmHA or its successor agency under Public Law 103–354 office.” and adding “paid by Rural Development, the field office may pay them in accordance to RD Instruction 2024–A, Exhibit D, Program Loan Cost Expenses.” in its place;
- b. In paragraphs (a)(2) and (a)(3), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;
- c. In paragraph (b) introductory text, removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 Office” and adding “Rural Development office” in its place; and
- d. In paragraph (b)(4), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place.

**§ 1962.34 [Amended]**

- 359. Amend § 1962.34 by:
  - a. In the introductory text, removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place and removing “Form FmHA or its successor agency under Public Law 103–354 410–1, “Application for FmHA or its successor agency under Public Law 103–354 Services,” and adding “Form RD 410–1, “Application for RD Services,” in its place;
  - b. In paragraph (a)(1), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - c. In paragraph (a)(2):
    - i. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;
    - ii. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by Rural Development” in its place;
    - iii. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place; and
    - iv. Removing “FmHA or its successor agency under Public Law 103–354

office” and adding “RD office” in its place; and

#### § 1962.40 [Amended]

■ 360. Amend § 1962.40(e)(1)(ii) by removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place.

#### § 1962.41 [Amended]

■ 361. Amend § 1962.41 by removing “Form FmHA or its successor agency under Public Law 103–354” and “Form FmHA” wherever they occur and adding “Form RD” in their place.

#### § 1962.42 [Amended]

■ 362. Amend § 1962.42 by:

- a. In paragraphs (b)(2) and (b)(3), removing “FmHA or its successor agency under Public Law 103–354”;
- b. In paragraph (c) introductory text, removing “by FmHA or its successor agency under Public Law 103–354” and adding “by Rural Development” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;
- c. In paragraph (c)(2), removing “FmHA or its successor agency under Public Law 103–354 employee” and adding “Rural Development employee” in its place;
- d. In paragraph (c)(3), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place, and removing “FmHA or its successor agency under Public Law 103–354 will” wherever it occurs and adding “Rural Development” in its place;
- e. In paragraphs (c)(4)(ii) and (c)(6)(i), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- f. Removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place in the following places:
  - i. Paragraphs (c)(5)(i) introductory text, (c)(5)(i)(A), (c)(5)(i)(B), and (c)(5)(ii);
  - ii. Paragraph (c)(6)(ii) introductory text;
  - iii. Paragraph (c)(6)(ii)(A); and
  - iv. Paragraph (c)(7);
- g. In paragraph (c)(8):
  - i. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by Rural Development” in its place;
  - ii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;

- iii. Removing “and FmHA or its successor agency under Public Law 103–354” and adding “and Rural Development” in its place; and
- h. In paragraph (d), removing “an FmHA or its successor agency under Public Law 103–354” and adding “a Rural Development” in its place.

#### § 1962.45 [Amended]

■ 363. Amend § 1962.45 by removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and by removing “by FmHA or its successor agency under Public Law 103–354” and adding “by Rural Development” in its place.

#### § 1962.49 [Amended]

■ 364. Amend § 1962.49 by:

- a. Removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place in the following places:
  - i. The introductory text;
  - ii. Paragraphs (b)(1)(v), (b)(2)(i), and (b)(2)(ii);
  - iii. Paragraphs (b)(3) introductory text and (b)(3)(i) through (b)(3)(iv);
  - iv. Paragraph (c) introductory text; and
  - v. Paragraphs (e)(2) introductory text, (e)(2)(i), and (e)(3) introductory text;
- b. In paragraph (a):
  - i. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place; and
  - iii. Removing “FmHA or its successor agency under Public Law 103–354 staff” and adding “Rural Development staff” in its place;
- c. In paragraph (b) introductory text:
  - i. Removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place;
  - ii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place; and
  - iii. Removing “interests of FmHA or its successor agency under Public Law 103–354” and adding “interests of Rural Development” in its place;
- e. In paragraph (b)(1)(vi), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place;
- f. In paragraph (c)(1), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place and removing “wh=n applicable” and adding “when applicable” in its place;

■ g. In paragraph (c)(3)(i):

- i. Removing “FmHA or its successor agency under Public Law 103–354 455–1” and adding “RD 455–1” in its place;
- ii. Removing “FmHA or its successor agency under Public Law 103–354 455–2” and adding “RD 455–2” in its place;
- iii. Removing “Forms FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- iv. Removing “FmHA or its successor agency under Public Law 103–354 employee” and adding “Rural Development employee” in its place; and
- v. Removing “FmHA or its successor agency under Public Law 103–354 employees” and adding “Rural Development employees” in its place;
- h. In paragraphs (c)(3)(ii) introductory text and (e)(2)(ii), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place;
- i. In paragraph (c)(3)(ii)(A), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place and removing “by FmHA or its successor agency under Public Law 103–354” and adding “by Rural Development” in its place;
- j. In paragraph (c)(3)(ii)(B), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place;
- k. In paragraph (d), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 field office” wherever it occurs and adding “Rural Development field office” in its place;
- l. In paragraph (e) introductory text, removing “FmHA or its successor agency under Public Law 103–354 1951–9, Annual ‘Statement of Loan Account,’ and adding “RD 1951–9, ‘Annual Statement of Loan Account,’ in its place; and
- m. In paragraph (e)(1), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 field office” wherever it occurs and adding “Rural Development field office” in its place.

#### PART 1980—GENERAL

- 365. The authority citation for part 1980 continues to read as follows:
 

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989. Subpart E also issued under 7 U.S.C. 1932(a).

## Subpart E—Business and Industrial Loan Program

### § 1980.401 [Amended]

■ 366. Amend § 1980.401(d) by removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

■ 367. Revise § 1980.405 to read as follows:

#### § 1980.405 Rural areas.

The business financed with a B&I loan must be located in a rural area. Loans to borrowers with facilities located in both rural and non-rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area. Cooperatives that are headquartered in a non-rural area may be eligible for a B&I loan if the loan is used for a project or venture that is located in a rural area. Rural areas are any areas other than a city or town that has a population of greater than 50,000 inhabitants; and the urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of the Census. For the purpose of this section:

(a) The population figure is obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data; and

(b) An urbanized area means a densely populated territory as defined in the most recent decennial Census or other Agency-accepted data source if not defined in the most recent decennial Census.

### § 1980.411 [Amended]

■ 368. Amend § 1980.411 by:

■ a. In paragraphs (a)(7) and (a)(11) introductory text, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;

■ b. In paragraph (a)(12):

■ i. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ ii. Removing “to FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “to Rural Development” in its place; and

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 State” and adding “Rural Development State” in its place; and

■ c. In paragraph (a)(13), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

### § 1980.412 [Amended]

■ 369. Amend § 1980.412 by removing in the Administrative text at the end of the section “FmHA or its successor agency under Public Law 103–354”.

### § 1980.413 [Amended]

■ 370. Amend § 1980.413(a) introductory text by removing “FmHA or its successor agency under Public Law 103–354” and adding “the Agency” in its place.

### § 1980.414 [Amended]

■ 371. Amend § 1980.414 by:

■ a. In paragraph (a), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “to FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “to Rural Development” in its place; and

■ b. In paragraph (b), removing “to FmHA or its successor agency under Public Law 103–354” and adding “to Rural Development” in its place.

### § 1980.419 [Amended]

■ 372. Amend § 1980.419 by removing from paragraph C. of the Administrative text “FmHA or its successor agency under Public Law 103–354 National Office” and adding “Rural Development National Office” in its place and by removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place.

### § 1980.420 [Amended]

■ 373. Amend § 1980.420 by:

■ a. In the introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and

■ b. In paragraph (d) introductory text:

■ i. Removing “FmHA or its successor agency under Public Law 103–354 informs” and adding “Rural Development informs” in its place;

■ ii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place; and

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 determines” and adding “Rural Development determines” in its place.

### § 1980.423 [Amended]

■ 374. Amend § 1980.423 by:

■ a. In paragraphs (a) introductory text and (a)(2), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development review” in its place;

■ b. In paragraph (a)(3), removing “Form FmHA or its successor agency under Public Law 103–354 conditional

Commitment For Guarantee,” and adding “Form RD 449–14, “Conditional Commitment for Guarantee,” in its place and removing “Form FmHA or its successor agency under Public Law 103–354 449–14” and adding “Form RD 449–14” in its place;

■ c. In paragraphs (a)(5), (a)(6) introductory text, and (b)(1), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development review” in its place;

■ d. In paragraph (b)(2), removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place and removing “FmHA or its successor agency under Public Law 103–354 Office” and adding “Rural Development office” in its place; and

■ e. In the Administrative text at the end of the section, removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place and removing “FmHA or its successor agency under Public Law 103–354 loan” and adding “Rural Development loan” in its place.

### § 1980.424 [Amended]

■ 375. Amend § 1980.424 by:

■ a. In paragraphs (a) and (d), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;

■ b. In paragraphs (b) and (c), removing “an FmHA or its successor agency under Public Law 103–354” and adding “a Rural Development” in its place; and

■ c. In the Administrative text at the end of the section, in its introductory text and paragraphs A.3 and 5, B.2 and 4, and C, removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place.

### §§ 1980.432 and 1980.433 [Amended]

■ 376. Amend §§ 1980.432 and 1980.433 by removing in the Administrative text at the end of the sections “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

### § 1980.434 [Amended]

■ 377. Amend § 1980.434 by removing in the Administrative text at the end of the section “FmHA or its successor agency under Public Law 103–354 Official” and adding “Rural Development official” in its place.

### § 1980.442 [Amended]

■ 378. Amend § 1980.442 by removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “and Rural Development” in its place.

**§ 1980.443 [Amended]**

- 379. Amend § 1980.443 by:
  - a. Removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place in the following places:
    - i. In paragraphs (a)(1), (a)(4)(i) introductory text, (a)(4)(i)(A)(4), (a)(4)(i)(B), (a)(4)(i)(C), and (a)(4)(ii); and
    - ii. In paragraphs (b)(1), (b)(2) introductory text, (b)(2)(i), (b)(5), (b)(6), and (b)(7)(iii); and
  - b. In the Administrative text at the end of the section:
    - i. Removing “FmHA or its successor agency under Public Law 103–354’s” from paragraph A introductory text and adding “Rural Development’s” in its place;
    - ii. Removing “FmHA or its successor agency under Public Law 103–354 at its” from paragraph A.3 and adding “Rural Development at its” in its place; and
    - iii. Removing “FmHA or its successor agency under Public Law 103–354 official” from paragraph A.3 and adding “Rural Development official” in its place.

**§ 1980.444 [Amended]**

- 380. Amend § 1980.444(b) and (e) by removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

**§ 1980.451 [Amended]**

- 381. Amend § 1980.451 by:
  - a. In paragraph (a), removing “desiring FmHA or its successor agency under Public Law 103–354 assistance” and adding “desiring assistance” in its place; and removing “FmHA or its successor agency under Public Law 103–354 State” and adding “Rural Development State” in its place;
  - b. In paragraph (b):
    - i. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place;
    - ii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place; and
    - iii. Removing “between FmHA or its successor agency under Public Law 103–354” and adding “between Rural Development” in its place;
  - c. In paragraph (c):
    - i. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by Rural Development” in its place;
    - ii. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” and adding “RD Instruction” in its place;

- iii. Removing “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in its place; and
- iv. Removing “SBA and FmHA or its successor agency under Public Law 103–354” and adding “the Small Business Administration and the U.S. Department of Agriculture Rural Development (Business and Industrial Loans)” in its place;
- d. In paragraphs (d) introductory text, (d)(1), (d)(3) introductory text, (d)(3)(iii) introductory text, and (d)(3)(iv)(A), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;
- e. In paragraph (d)(3)(v):
  - i. Removing “FmHA or its successor agency under Public Law 103–354-assisted” and adding “Rural Development-assisted” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 loans” and adding “Rural Development loans” in its place;
  - iii. Removing “FmHA or its successor agency under Public Law 103–354 funds” and adding “Rural Development funds” in its place; and
  - iv. Removing “FmHA or its successor agency under Public Law 103–354 will consider” and adding “Rural Development will consider” in its place;
- f. Revising paragraph (d)(3)(vi);
- g. In paragraph (e) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- h. In paragraph (f)(2), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- i. In paragraph (f)(3):
  - i. Removing “FmHA or its successor agency under Public Law 103–354 449–4” wherever it occurs and adding “RD 449–4” in its place;
  - ii. Removing “by FmHA or its successor agency under Public Law 103–354” and adding “by Rural Development” in its place; and
  - iii. Removing “result in FmHA or its successor agency under Public Law 103–354’s” and adding “result in Rural Development” in its place;
- j. In paragraph (g), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place, and removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place;
- k. In paragraph (h), removing “FmHA or its successor agency under Public Law 103–354 will submit Form FmHA

or its successor agency under Public Law 103–354 449–22” and adding “Rural Development will submit Form RD 449–22” in its place;

- l. In paragraphs (i)(1), (i)(2), (i)(3), and (i)(10), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;
- m. In paragraphs (i)(7), (i)(9), (i)(13)(viii), (i)(13)(x), and (i)(15), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- n. In paragraph (i)(13) introductory text, removing “FmHA” wherever it occurs and adding “RD” in its place;
- o. In paragraph (i)(18)(i), removing “FmHA or its successor agency under Public Law 103–354 solicits” and adding “Rural Development solicits” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- p. In paragraph (i)(18)(ii):
  - i. Removing “If FmHA or its successor agency under Public Law 103–354” and adding “If Rural Development” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 will” and adding “Rural Development will” in its place; and
  - iii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- q. In paragraph (i)(19), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
- r. In paragraphs (j) and (k), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and
- s. In the Administrative text at the end of the section:
  - i. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs in paragraphs A.3 through 5, A.6(a) through (c), and B.3(b) and (c), and adding “Form RD” in its place;
  - ii. Removing “FmHA or its successor agency under Public Law 103–354 with” in paragraphs A.3 and 4 and adding “Rural Development with” in its place;
  - iii. Removing “whom FmHA or its successor agency under Public Law 103–354” in paragraph A.4 and adding “whom Rural Development” in its place;
  - iv. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” wherever it occurs in

paragraphs A.5 and B.5 and adding “RD Instruction” in its place;

■ v. Removing “FmHA or its successor agency under Public Law 103–354 449–4” in paragraph A.6(c) and the note to paragraph A.6 and adding “RD 449–4” in its place;

■ vi. Removing “Forms FmHA or its successor agency under Public Law 103–354” in the note to paragraph A.6 and adding “Forms RD” in its place;

■ vii. Removing “Form FmHA or its successor agency under Public Law 103–354 449–29, “Project Summary—Business Industrial Loan Division,” in paragraph B.3.(b) and adding “A Project Summary” in its place;

■ viii. Removing “Copy of FmHA or its successor agency under Public Law 103–354” in paragraph B.3.(d) and adding “Copy of Rural Development” in its place;

■ ix. Removing “FmHA or its successor agency under Public Law 103–354 office” in paragraph B.5 and adding “Rural Development office” in its place;

■ x. Removing “FmHA or its successor agency under Public Law 103–354 employees” in paragraph B.5 and adding “Rural Development employees” in its place;

■ xi. Removing “FmHA or its successor agency under Public Law 103–354’s” in paragraph B.5 and adding “Rural Development’s” in its place;

■ xii. Removing “FmHA or its successor agency under Public Law 103–354 position” in paragraph B.5 and adding “Rural Development position” in its place;

■ xiii. Removing “FmHA or its successor agency under Public Law 103–354 urges” in paragraph B.6 and adding “Rural Development urges” in its place;

■ xiv. Removing “FmHA or its successor agency under Public Law 103–354 audit” in paragraph B.6 and adding “Rural Development audit” in its place;

■ xv. Removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs in the Description of Record or Form Number and Title table at the end of the Administrative text section and adding “RD” in its place; and

■ xvi. Removing “449–29” in the Description of Record or Form Number and Title table at the end of the Administrative text section and adding “449–29 (obsolete)” in its place.

The revision reads as follows:

**§ 1980.451 Filing and processing applications.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(vi) *Indexation*. When current annual data are not available to determine a State’s nonmetropolitan household income for purposes of the calculations described in paragraph (d)(3)(iii) of this section, indexation of census data is necessary. The State Director will use the figure from the 5-year data from the American Community Survey (ACS) or, if needed, other Census Bureau data, increased by a factor representing the increase since the year of that census in the Consumer Price Index (“CPI-U”). That factor shall be furnished annually by the National Office, Rural Development.

\* \* \* \* \*

**§ 1980.452 [Amended]**

■ 382. Amend § 1980.452 by:

■ a. Removing “FmHA or its successor agency under Public Law 103–354 evaluation” from the section heading and adding “Rural Development evaluation” in its place;

■ b. Removing “FmHA or its successor agency under Public Law 103–354 will” wherever it occurs in the introductory text and adding “Rural Development will” in its place;

■ c. Removing “If FmHA or its successor agency under Public Law 103–354” wherever it occurs in the introductory text and adding “If Rural Development” in its place;

■ d. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs in the introductory text and adding “Form RD” in its place;

■ e. Removing “FmHA or its successor agency under Public Law 103–354 State” in the introductory text, and adding “Rural Development State” in its place; and

■ f. In the Administrative text at the end of the section:

■ i. Removing “an FmHA or its successor agency under Public Law 103–354 State” in paragraph D. introductory text, and adding “a Rural Development State” in its place;

■ ii. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs in paragraphs D. introductory text, D.6 introductory text, D.6.a, b, and d, and d.7, and adding “Form RD” in its place;

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 employees” in paragraph D. introductory text and adding “Rural Development employees” in its place;

■ iv. Removing “non-FmHA or its successor agency under Public Law 103–354” in paragraph D.2 and adding “non-Rural Development” in its place;

■ v. Removing “FmHA or its successor agency under Public Law 103–354

Instruction” in paragraphs D.2 and D.6.d and e, and adding “RD Instruction” in its place;

■ vi. Removing “FmHA or its successor agency under Public Law 103–354 Office” in paragraphs D.2 and D.6.d and e, and “FmHA or its successor agency under Public Law 103–354 office” and adding “Rural Development office” in their place;

■ vii. Removing “the FmHA or its successor agency under Public Law 103–354 State” in paragraphs D. introductory text and D.3 and adding “the Rural Development State” in its place;

■ viii. Removing “FmHA or its successor agency under Public Law 103–354 programs” wherever it occurs in paragraph D.3 and adding “Rural Development programs” in its place;

■ ix. Removing “FmHA or its successor agency under Public Law 103–354 as a” in paragraph D.3 and adding “Rural Development as a” in its place;

■ x. Removing “FmHA or its successor agency under Public Law 103–354 case” in paragraph D.6 introductory text and adding “Rural Development case” in its place; and

■ xi. Removing “Legislative Affairs and Public Information staff in the National Office” in paragraph D.6.d and adding “Legislative and Public Affairs Staff in the Rural Development National Office” in its place.

**§ 1980.453 [Amended]**

■ 383. Amend § 1980.453 by:

■ a. In paragraph (a):

■ i. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;

■ ii. Removing “FmHA or its successor agency under Public Law 103–354 State” and adding “Rural Development State” in its place; and

■ iii. Removing “to FmHA or its successor agency under Public Law 103–354” and adding “to Rural Development” in its place;

■ b. In paragraph (b), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and

■ c. In the Administrative text at the end of the section:

■ i. Removing “Form FmHA or its successor agency under Public Law 103–354 449–29” and adding “the Project Summary” in its place; and

■ ii. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ iii. Removing “2. A copy of FmHA or its successor agency under Public Law 103–354 State Loan Review Board

Minutes” and adding “3. A copy of Rural Development State Loan Review Board Minutes” in its place.

#### § 1980.454 [Amended]

■ 384. Amend § 1980.454 by:

■ a. In paragraph (a):

■ i. Removing “FmHA or its successor agency under Public Law 103–354 State” and adding “Rural Development State” in its place;

■ ii. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ iii. Removing “provide FmHA or its successor agency under Public Law 103–354” and adding “provide Rural Development” in its place; and

■ iv. Removing “approved by FmHA or its successor agency under Public Law 103–354” and adding “approved by Rural Development” in its place;

■ b. In paragraph (b):

■ i. Removing “FmHA or its successor agency under Public Law 103–354 will” and adding “Rural Development will” in its place;

■ ii. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place; and

■ iii. Removing “approved by the FmHA or its successor agency under Public Law 103–354 National Office” and adding “approved by the National Office” in its place;

■ c. In paragraph (c), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place and removing “intent of FmHA or its successor agency under Public Law 103–354” and adding “intent of Rural Development” in its place;

■ d. In paragraphs (e) and (f), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place; and

■ e. In the Administrative text at the end of the section:

■ i. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place;

■ ii. Removing “Inspection Reports” in paragraph A.2 and adding “Inspection Report” in its place;

■ iii. Removing “FmHA or its successor agency under Public Law 103–354 personnel” in paragraph C. and adding “Rural Development personnel” in its place; and

■ iv. Removing “by FmHA or its successor agency under Public Law 103–354” in paragraph F. and adding “by Rural Development” in its place.

#### § 1980.469 [Amended]

■ 385. Amend § 1980.469 by:

■ a. In the introductory text, removing “FmHA or its successor agency under Public Law 103–354 of” and adding “Rural Development (RD) of” in its place and removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;

■ b. In paragraphs (a)(1), (c) introductory text, and (c)(1), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and

■ c. In the Administrative text at the end of the section:

■ i. Removing “Refer to appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office)” in the introductory text and adding “Refer to RD Instruction 1980–E, Appendix G, Liquidation and Property Management Guide (available in any RD office)” in its place;

■ ii. Removing “which FmHA or its successor agency under Public Law 103–354” in paragraph B.1 and adding “which Rural Development” in its place;

■ iii. Removing “approved by FmHA or its successor agency under Public Law 103–354” in paragraph B.1 and adding “approved by Rural Development” in its place;

■ iv. Removing “the time FmHA or its successor agency under Public Law 103–354” wherever it occurs in paragraphs B.2 and C.4 and adding “the time Rural Development” in its place;

■ v. Removing “occurs FmHA or its successor agency under Public Law 103–354” in paragraph B.2 and adding “occurs Rural Development” in its place;

■ vi. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” in paragraph B.3 and adding “RD Instruction” in its place;

■ vii. Removing “FmHA or its successor agency under Public Law 103–354 office” in paragraph B.3 and adding “Rural Development office” in its place;

■ viii. Removing “FmHA or its successor agency under Public Law 103–354 staff” in paragraph B.3 and adding “Rural Development staff” in its place;

■ ix. Removing “If FmHA or its successor agency under Public Law 103–354” in paragraphs B.3 and 5 and adding “If Rural Development” in its place;

■ x. Removing “claim to FmHA or its successor agency under Public Law 103–354” wherever it occurs in paragraphs B.3 and 4 and adding “claim to Rural Development” in its place;

■ xi. Removing “guaranteed by FmHA or its successor agency under Public Law 103–354” in paragraph B.3 and adding “guaranteed by Rural Development” in its place;

■ xii. Removing “FmHA or its successor agency under Public Law 103–354 was deceived” in paragraph B.6 and adding “Rural Development was deceived” in its place;

■ xiii. Removing “FmHA or its successor agency under Public Law 103–354 could then” in paragraph B.7 and adding “Rural Development could then” in its place;

■ xiv. Removing “FmHA or its successor agency under Public Law 103–354 personnel” in paragraph C.2 and adding “Rural Development personnel” in its place;

■ xv. Removing “Form FmHA or its successor agency under Public Law 103–354” in paragraphs C.3.(d) and C.4 and adding “Form RD” in its place;

■ xvi. Removing “noted by FmHA or its successor agency under Public Law 103–354” in paragraph C.4 and adding “noted by Rural Development” in its place;

■ xvii. Removing “statements for FmHA or its successor agency under Public Law 103–354” in paragraph C.5 and adding “statements for Rural Development” in its place;

■ xviii. Removing “FmHA or its successor agency under Public Law 103–354 in turn” in paragraph C.5 and adding “Rural Development in turn” in its place;

■ xix. Removing “FmHA or its successor agency under Public Law 103–354’s” in paragraph C.5 and adding “Rural Development’s” in its place; and

■ xx. Removing “borrower and FmHA or its successor agency under Public Law 103–354” in paragraph C.6 and adding “borrower, and Rural Development” in its place.

#### § 1980.470 [Amended]

■ 386. Amend the Administrative text at the end of § 1980.470 by:

■ a. Removing “Refer to appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office)” from the introductory text and adding “Refer to RD Instruction 1980–E, Appendix G, Liquidation and Property Management Guide (available in any Rural Development office)” in its place;

■ b. Removing “by the FmHA or its successor agency under Public Law 103–354” in paragraph A. and adding “by the Rural Development” in its place;

■ c. Removing “by FmHA or its successor agency under Public Law 103–354” in paragraph A. and adding “by Rural Development” in its place;

- d. Removing “Form FmHA or its successor agency under Public Law 103–354” in paragraphs B. and D. and adding “Form RD” in its place;
- e. Removing “risks of the FmHA or its successor agency under Public Law 103–354” in paragraph B. and adding “risks of Rural Development” in its place;
- f. Removing “the lender and FmHA or its successor agency under Public Law 103–354” in paragraph B. and adding “the lender and Rural Development” in its place;
- g. Removing “when FmHA or its successor agency under Public Law 103–354” in paragraph D. and adding “when Rural Development” in its place;
- h. Removing “will FmHA or its successor agency under Public Law 103–354 endorse” in paragraph D. and adding “will Rural Development endorse” in its place; and
- i. Removing “assist FmHA or its successor agency under Public Law 103–354” in paragraph F. and adding “assist Rural Development” in its place.

#### § 1980.471 [Amended]

- 387. Amend § 1980.471 by:
  - a. In the introductory text, removing “Refer to appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office)” and adding “Refer to RD Instruction 1980–E, Appendix G, Liquidation and Property Management Guide (available in any Rural Development office)” in its place;
  - b. In paragraphs (a)(1) and (a)(2), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and
  - c. In the Administrative text at the end of the section:
    - i. Removing “FmHA or its successor agency under Public Law 103–354 personnel” in paragraph A. and adding “Rural Development personnel” in its place;
    - ii. Removing “FmHA or its successor agency under Public Law 103–354 will” in paragraph B. and adding “Rural Development will” in its place;
    - iii. Removing “between FmHA or its successor agency under Public Law 103–354” in paragraph B. and adding “between Rural Development” in its place;
    - iv. Removing “FmHA or its successor agency under Public Law 103–354 consider” in paragraph B. and adding “Rural Development consider” in its place;
    - v. Removing “When FmHA or its successor agency under Public Law 103–354 liquidates,” in paragraph B. and adding “When Rural Development liquidates,” in its place;

- vi. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs in paragraphs B. and E. and adding “Form RD” in its place;
- vii. Removing “FmHA or its successor agency under Public Law 103–354 is” in paragraph D. and adding “Rural Development is” in its place;
- viii. Removing “499–30” in paragraph E. and adding “449–30” in its place;
- ix. Removing “by FmHA or its successor agency under Public Law 103–354 to” in paragraph F. and adding “by Rural Development to” in its place; and
- x. Removing “FmHA or its successor agency under Public Law 103–354 guaranteed loan” in paragraph F. and adding “Rural Development guaranteed loan” in its place.

#### § 1980.472 [Amended]

- 388. Amend § 1980.472 by removing “Refer to appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office)” and adding “Refer to RD Instruction 1980–E, Appendix G, Liquidation and Property Management Guide (available in any Rural Development office)” in its place.

#### § 1980.473 [Amended]

- 389. Amend § 1980.473 by removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place.

#### § 1980.475 [Amended]

- 390. Amend § 1980.475 by:
  - a. In paragraph (a)(6), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place;
  - b. In paragraph (b), removing “FmHA or its successor agency under Public Law 103–354’s opinion, FmHA or its successor agency under Public Law 103–354” and adding “Rural Development’s opinion, Rural Development” in its place;
  - c. In paragraph (d), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place; and
  - d. In the Administrative text at the end of the section:
    - i. Removing “Refer to appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office)” in the introductory text and adding “Refer to RD Instruction 1980–E, Appendix G, Liquidation and Property Management Guide (available in any Rural Development office)” in its place;
    - ii. Removing “that FmHA or its successor agency under Public Law

- 103–354” in paragraph A. and adding “that Rural Development” in its place;
- iii. Removing “advising FmHA or its successor agency under Public Law 103–354” in paragraph F. and adding “advising Rural Development” in its place;
- iv. Removing “FmHA or its successor agency under Public Law 103–354 servicing” wherever it occurs in paragraphs F. and H. and adding “Rural Development servicing” in its place; and
- v. Removing “actions FmHA or its successor agency under Public Law 103–354” in paragraph H. and adding “actions Rural Development” in its place.

#### § 1980.476 [Amended]

- 391. Amend § 1980.476 by:
  - a. Removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place wherever it occurs in the following places:
    - i. Paragraph (a);
    - i. Paragraphs (e) introductory text, (e)(1), (e)(2), (g)(2)(i), and (g)(2)(iii);
    - ii. Paragraph (h);
    - iii. Paragraph (i);
    - iv. Paragraph (j);
    - v. Paragraph (l);
    - vi. Paragraph (m) introductory text; and
    - vii. Paragraph (n);
  - b. In paragraph (c), removing “FmHA or its successor agency under Public Law 103–354 Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
  - c. In paragraph (p), removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Form RD” in its place and removing “Form 449–30” and adding “Form RD 449–30” in its place; and
  - d. In the Administrative text at the end of the section:
    - i. Removing “Refer to appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office)” and adding “Refer to RD Instruction 1980–E, Appendix G, Liquidation and Property Management Guide (available in any Rural Development office)” in its place;
    - ii. Removing “FmHA or its successor agency under Public Law 103–354 file” in paragraph B. and adding “Rural Development file” in its place; and
    - iii. Removing “Form FmHA or its successor agency under Public Law 103–354” in paragraph B. wherever it occurs and adding “Form RD” in its place.

**§ 1980.481 [Amended]**

■ 392. Amend § 1980.481 introductory text by removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

**§ 1980.488 [Amended]**

■ 393. Amend § 1980.488(a) and (b), and the administrative text at the end of the section by removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place.

**§ 1980.490 [Amended]**

■ 394. Amend § 1980.490 by:

- a. In paragraphs (d)(1) through (d)(4), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;
- b. In paragraph (f)(1), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “RD” in its place;
- c. In paragraph (f)(2):
  - i. Removing “FmHA or its successor agency under Public Law 103–354 will” and adding “Rural Development will” in its place;
  - ii. Removing “Form FmHA or its successor agency under Public Law 103–354 449–29” and adding “the Project Summary” in its place; and
  - iii. Removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place;
- d. In paragraph (f)(3), removing “FmHA or its successor agency under Public Law 103–354 will” wherever it occurs and adding “Rural Development will” in its place and removing “Form FmHA or its successor agency under Public Law 103–354 1980–48” and adding “Form 1980–48” in its place;
- e. In paragraph (f)(4):
  - i. Removing “from FmHA or its successor agency under Public Law 103–354” and adding “from Rural Development” in its place;
  - ii. Removing “Form FmHA or its successor agency under Public Law 103–354 1980–23, “Request for Business and Industry Interest Buydown Payment,” and adding “Form RD 1980–24, “Request Interest Assistance/Interest Rate Buydown Subsidy Payment to Guaranteed Loan Lender,” in its place;
  - iii. Removing “FmHA or its successor agency under Public Law 103–354 servicing office” wherever it occurs and adding “Rural Development servicing office” in its place;
  - iv. Removing “FmHA or its successor agency under Public Law 103–354 regulations” and adding “Rural Development regulations” in its place; and

- v. Removing “Form FmHA or its successor agency under Public Law 103–354 1980–48” and adding “Form 1980–48” in its place;
  - f. In paragraph (g), removing “When FmHA or its successor agency under Public Law 103–354” and adding “When Rural Development” in its place and removing “Form FmHA or its successor agency under Public Law 103–354 1980–23” and adding “Form RD 1980–24” in its place;
  - g. In paragraphs (n) introductory text, (n)(4), and (n)(5), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;
  - h. In paragraphs (p)(4) introductory text and (p)(5)(iii), removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and
  - i. In paragraph (p)(4)(ii), removing “Form FmHA or its successor agency under Public Law 103–354 1980–25, “Farmer Programs Applications,” or FmHA or its successor agency under Public Law 103–354 449–1” and adding “Form RD 449–1” in its place.
- 395. Revise § 1980.495 to read as follows:

**§ 1980.495 RD forms and guides.**

The following RD forms and guides, as applicable, are used in connection with processing B&I, D&D, and DARBE loan guarantees; they are incorporated in this subpart and made a part hereof:

- (a) Form RD 449–1. “Application for Loan and Guarantee” is referred to as “Appendix A,” or successor form,
- (b) The “Certificate of Incumbency and Signature” or successor form,
- (c) “Guidelines for Loan Guarantees for Alcohol Fuel Production Facilities” is referred to as “Appendix C.”
- (d) “Alcohol Production Facilities Planning, Performing, Development and Project Control” is referred to as “Appendix D.”
- (e) “Environmental Assessment Guidelines” is referred to as “Appendix E.”
- (f) Form RD 449–14, “Conditional Commitment for Guarantee,” or successor form.
- (g) “Liquidation and Property Management Guide” as found in RD Instruction 1980–E Appendix G.
- (h) “Suggested Format for the Opinion of the Lender’s Legal Counsel” is referred to as “Appendix H.”
- (i) “Instructions for Loan Guarantees for Drought and Disaster Relief” and Forms RD 1980–68, “Lender’s Agreement—Drought and Disaster Guaranteed Loans,” 1980–69, “Loan Note Guarantee—Drought and Disaster Guaranteed Loans,” and 1980–70, “Assignment Guarantee Agreement—

Drought and Disaster Guaranteed Loans,” or their successor forms.

(j) [Reserved]

(k) “Regulations for Loan Guarantees for Disaster Assistance for Rural Business Enterprises” and Forms RD 1980–71, “Lender’s Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans,” 1980–72 “Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises Guaranteed Loans,” and 1980–73 “Assignment Guarantee Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans” or their successor forms.

**§ 1980.497 [Amended]**

■ 396. Amend § 1980.497 by:

- a. In the introductory text, removing “Refer to appendix G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 Office)” and adding “Refer to RD Instruction 1980–E, Appendix G, Liquidation and Property Management Guide (available in any Rural Development office)” in its place;
- b. In paragraphs (a), (b) introductory text, (c), and (d)(1), removing “FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “Rural Development” in its place;
- c. In paragraphs (b)(2) introductory text and (b)(3), removing “FmHA or its successor agency under Public Law 103–354’s” and adding “Rural Development’s” in its place;
- d. In paragraphs (d)(2) and (d)(7) through (d)(9), removing “Form FmHA or its successor agency under Public Law 103–354” and adding “Form RD” in its place; and
- e. In paragraph (f):
  - i. Removing “to FmHA or its successor agency under Public Law 103–354” and adding “to Rural Development” in its place;
  - ii. Removing “BENEFIT OF FmHA or its successor agency under Public Law 103–354” and adding “benefit of RURAL DEVELOPMENT” in its place; and
  - iii. Removing “UNDER FmHA or its successor agency under Public Law 103–354” wherever it occurs and adding “UNDER RURAL DEVELOPMENT” in its place.

**§ 1980.498 [Amended]**

■ 397. Amend § 1980.498 by:

- a. In paragraphs (k) introductory text, (k)(4), and (k)(5), removing “FmHA or its successor agency under Public Law 103–354” and adding “RD” in its place;
- b. In paragraph (m)(5) introductory text, removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place; and



■ c. In paragraph (m)(5)(iii), removing “Form FmHA or its successor agency under Public Law 103–354 410–1, “Application for FmHA or its successor agency under Public Law 103–354 Services,” or Form FmHA or its successor agency under Public Law 103–354 449–1” and adding “Form RD 449–1” in its place.

#### **Appendices A and B to Subpart E of Part 1980 [Removed and Reserved]**

■ 398. Appendices A and B to Subpart E of Part 1980 are removed and reserved.

#### **Appendix D to Subpart E of Part 1980 [Amended]**

■ 399. Amend Appendix D to Subpart E of Part 1980 by removing:

■ a. “the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354)” in paragraph (I)(B) and adding “Rural Development” in its place;

■ b. “FmHA or its successor agency under Public Law 103–354” wherever it occurs in paragraphs (I)(B)(2)(a), (II)(A)(2)(g)(ii), (III)(A)(2), (III)(E) introductory text, (III)(E)(2), (III)(G), (IV)(A), and (IV)(B)(1) and adding “Rural Development” in its place; and

■ c. “Form FmHA or its successor agency under Public Law 103–354” in paragraph (IV)(B)(3) and adding “Form RD” in its place.

#### **Appendix E to Subpart E of Part 1980 [Amended]**

■ 400. Amend Appendix E to Subpart E of Part 1980 by removing:

■ a. “FmHA or its successor agency under Public Law 103–354’s position” in paragraph (I) and adding “Rural Development’s position” in its place;

■ b. “an FmHA or its successor agency under Public Law 103–354 action” in paragraph (II) and adding “a Rural Development action” in its place; and

■ c. “the FmHA or its successor agency under Public Law 103–354 action” wherever it occurs in paragraph (II) and adding “the Rural Development action” in its place;

■ d. “FmHA or its successor agency under Public Law 103–354 project” in paragraph (IV)(2) and adding “Rural Development project” in its place;

■ e. “or FmHA or its successor agency under Public Law 103–354” in paragraph (XIII) and adding “or Rural Development” in its place; and

■ f. “by FmHA or its successor agency under Public Law 103–354” in paragraph (XVII) and adding “by Rural Development” in its place.

#### **Appendix F to Subpart E of Part 1980 [Removed and Reserved]**

■ 401. Appendix F to subpart E of Part 1980 is removed and reserved.

■ 402. Amend Appendix I to Subpart E of Part 1980 by:

■ a. Removing “, and appear in the **Federal Register** following the body of this appendix as Exhibits A, B, and C in the following order” in paragraph A. introductory text;

■ b. Removing “Form FmHA or its successor agency under Public Law 103–354” in paragraphs X.D and X.F and adding “Form RD” in its place;

■ c. Removing “will be used” in paragraphs A.(1) through (3), IV., and E.1 and 2, and adding “or successor form will be used” in its place;

■ d. Removing “FmHA or its successor agency under Public Law 103–354 will not” in paragraph D. introductory text, and adding “Rural Development will not” in its place;

■ e. Removing “by FmHA or its successor agency under Public Law 103–354” in paragraph D.(2) and adding “by Rural Development” in its place;

■ f. Removing “are FmHA or its successor agency under Public Law 103–354” in paragraph J. and adding “are Rural Development” in its place;

■ g. Removing “FmHA or its successor agency under Public Law 103–354 has” in paragraph J. and adding “Rural Development has” in its place; and

■ h. Removing Exhibits A through C.

#### **Appendix K to Subpart E of Part 1980 [Amended]**

■ 403. Amend Appendix K to Subpart E of Part 1980 by:

■ a. Removing “, and appear in the **Federal Register** following the body of this appendix as exhibits A, B, and C in the following order” in the introductory text;

■ b. Removing “Form FmHA or its successor agency under Public Law 103–354” wherever it occurs in paragraphs A.(1) through (3) and G. and adding “Form RD” in its place;

■ c. Removing “will be used” in paragraphs A.(1) through (3) and adding “or successor form will be used” in its place;

■ d. Removing “FmHA or its successor agency under Public Law 103–354 Instruction” and “FmHA or its successor agency under Public Law 103–354 instruction” wherever they occur in paragraphs B. through F., H., J., and K. and adding “RD Instruction” in their place;

■ e. Removing “other FmHA or its successor agency under Public Law 103–354-type farm loan” in paragraph C. and adding “other Rural

Development-type farm loan” in its place;

■ f. Removing “FmHA or its successor agency under Public Law 103–354 will” in paragraph D. and adding “Rural Development will” in its place;

■ g. Removing “by FmHA or its successor agency under Public Law 103–354” in paragraph D. and adding “by Rural Development” in its place;

■ h. Removing “will FmHA or its successor agency under Public Law 103–354” in paragraph D. and adding “will Rural Development” in its place;

■ i. Removing “FmHA or its successor agency under Public Law 103–354’s” in paragraph F. and adding “Rural Development’s” in its place;

■ j. Removing “Guarantee DARBE,” issued on” in paragraph G. and adding “Guarantee DARBE, ” (or successor form) issued on” in its place;

■ k. Removing “are FmHA or its successor agency under Public Law 103–354” in paragraph J. and adding “are Rural Development” in its place;

■ l. Removing “FmHA or its successor agency under Public Law 103–354 guaranteed loans” in paragraph J. and adding “Rural Development guaranteed loans” in its place;

■ m. Removing “FmHA or its successor agency under Public Law 103–354 has” and adding “Rural Development has” in paragraph J. in its place; and

■ n. Removing Exhibits A through C.

#### **Exhibit G to Subpart E of Part 1980 [Amended]**

■ 404. Amend the Note to Exhibit G to Subpart E of Part 1980 by removing “FmHA or its successor agency under Public Law 103–354” and adding “Rural Development” in its place.

#### **CHAPTER XXXV—RURAL HOUSING SERVICE, DEPARTMENT OF AGRICULTURE**

#### **PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS**

■ 405. The authority citation for part 3550 continues to read as follows:

**Authority:** 5 U.S.C. 301; 42 U.S.C. 1480.

#### **Subpart C—Section 504 Origination and Section 306C Water and Waste Disposal Grants**

##### **§ 3550.103 [Amended]**

■ 406. Amend § 3550.103(g) by removing “FmHA” and adding “RD” in its place.

■ 407. In § 3550.116, revise paragraph (c) to read as follows:

##### **§ 3550.116 Definitions applicable to WWD grants only.**

\* \* \* \* \*

(c) *Rural areas.* Includes unincorporated areas and any city or town with a population not in excess of 10,000 inhabitants. The population figure is obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

\* \* \* \* \*

**PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS**

■ 408. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

**Subpart A—General Provisions and Definitions**

**§ 3560.11 [Amended]**

■ 409. In § 3560.11, revise the definition of “Rural area” to read as follows:

**§ 3560.11 Definitions.**

\* \* \* \* \*

*Rural area.* An area classified as a rural area prior to October 1, 1990, (even if within a Metropolitan Statistical Area), and any area deemed to be a ‘rural area’ under any other provision of law at any time during the period beginning January 1, 2000, and ending December 31, 2010, shall continue to be so classified until the receipt of data from the decennial census in the year 2020 if such area has a population exceeding 10,000, but not in excess of 35,000, is rural in character, and has a serious lack of mortgage credit for low- and moderate-income families.

\* \* \* \* \*

**Subpart B—Direct Loan and Grant Origination**

**§ 3560.57 [Amended]**

■ 410. Amend § 3560.57(c) by removing “most recent census data, or” and adding “most recent decennial Census of the United States, or” in its place.

**PART 3570—COMMUNITY PROGRAMS**

■ 411. The authority citation for part 3570 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

■ 412. Revise § 3570.51(h) to read as follows:

**§ 3570.51 General.**

\* \* \* \* \*

(h) The income data used to determine median household income must be that which accurately reflects the income of the population to be

served by the proposed facility. The median household income of the service area and the nonmetropolitan median household income for the State will be determined using 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data. If there is reason to believe that the ACS or other Census Bureau data does not accurately represent the median household income within the area to be served, this will be documented and the applicant may furnish, or RD may obtain, additional information regarding such median household income data. Information must consist of reliable data from local, regional, State, or Federal sources or from a survey conducted by a reliable impartial source.

\* \* \* \* \*

■ 413. In § 3570.53, revise the definition of “Rural and rural area” to read as follows:

**§ 3570.53 Definitions.**

\* \* \* \* \*

*Rural and rural area.* For fiscal year 1999, the terms “rural” and “rural area” include a city or town with a population of 20,000 or less inhabitants. There is no limitation placed on population in open rural areas. After fiscal year 1999, the terms “rural” and “rural area” include a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants. The population figures are obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figures cannot be obtained from the most recent decennial Census, RD will determine the applicable population figures based on available population data.

\* \* \* \* \*

**PART 3575—GENERAL**

■ 414. The authority citation for part 3575 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

**Subpart A—Community Programs Guaranteed Loans**

■ 415. In § 3575.2, revise the definition of “Rural and rural area” to read as follows:

**§ 3575.2 Definitions.**

\* \* \* \* \*

*Rural and rural area.* The terms “rural” and “rural area” mean a city, town, or unincorporated area that has a population of 50,000 inhabitants or less,

other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants. The population figure is obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

\* \* \* \* \*

**CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE**

**PART 4274—DIRECT AND INSURED LOANMAKING**

■ 416. The authority citation for part 4274 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

■ 417. In § 4274.302(a), remove the definition of “Rural or rural area” and add the definition of “Rural area” in alphabetical order to read as follows:

**§ 4274.302 Definitions and abbreviations.**

(a) \* \* \*

*Rural area.* All territory of a State that is not within the outer boundary of any city having a population of 25,000 or more. The population figure is obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

\* \* \* \* \*

■ 418. In § 4274.344, revise paragraphs (c)(2) introductory text and (c)(2)(vi) introductory text to read as follows:

**§ 4274.344 Filing and processing applications for loans.**

\* \* \* \* \*

(c) \* \* \*

(2) *Employment.* For computations under this paragraph, income data should be 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data, updated according to changes in the consumer price index. If there is reason to believe that the ACS or other Census Bureau data does not accurately represent the median household income of the service area, the reasons will be documented and the borrower may furnish, or RD may obtain, additional information regarding such median household income data. Information must consist of reliable data from local,

regional, State or Federal sources or from a survey conducted by a reliable impartial source. The poverty line used will be as defined in section 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)). Unemployment data used will be that published by the Bureau of Labor Statistics, U.S. Department of Labor.

\* \* \* \* \*

(vi) The population of the service area according to the most recent decennial Census was lower than that recorded by the previous decennial Census (or as equivalently determined using another data source if the other data source was used in determining whether the area was rural) by the following percentage:

\* \* \* \* \*

**PART 4279—GUARANTEED LOANMAKING**

■ 419. The authority citation for part 4279 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932(a); and 7 U.S.C. 1989.

**Subpart A—General**

■ 420. In § 4279.2, revise the definition of “Poor” to read as follows:

**§ 4279.2 Definitions and abbreviations.**

\* \* \* \* \*

*Poor.* A community or area is considered poor if either the county, city, or census tract where the community or area is located has a median household income at or below the poverty line for a family of four; has a median household income below the nonmetropolitan median household income for the State; or has a population of which 25 percent or more have income at or below the poverty line. The determination of “poor” will be based on 5-year data from the American Community Survey (ACS) or, if needed, other Census Bureau data. If there is reason to believe that the ACS or other Census Bureau data does not accurately represent the median household income of the community or area, the reasons will be documented and the borrower may furnish, or RD may obtain, additional information regarding such median household income data. Information must consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source.

\* \* \* \* \*

**PART 4280—LOANS AND GRANTS**

■ 421. The authority citation for part 4280 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 904c; 7 U.S.C. 8107.

**Subpart A—Rural Economic Development Loan and Grant Program**

■ 422. In § 4280.3, remove the definition of “Rural area” and add the definition of “Rural or rural area” in alphabetical order to read as follows:

**§ 4280.3 Definitions.**

\* \* \* \* \*

*Rural or rural area.* See 7 U.S.C. 1991(a)(13)(A) and (D) *et seq.*

\* \* \* \* \*

■ 423. Revise § 4280.42(b)(7) to read as follows:

**§ 4280.42 Application evaluation and selection.**

\* \* \* \* \*

(b) \* \* \*

(7) *Decline in population for the county where the Project is physically located.* If there has been a decline in population in the county where the Project will be located over the time period covered by the two most recent decennial Censuses to the present (or equivalent time frame if using a data source other than the decennial Census), Rural Development will award 10 points.

\* \* \* \* \*

**Subpart B—Rural Energy for America Program General**

**§ 4280.103 [Amended]**

■ 424. Amend § 4280.103 by removing “the latest decennial census” in the introductory text to the definition of “Rural or rural area” and adding “the most recent decennial Census” in its place.

**Subpart D—Rural Microentrepreneur Assistance Program**

■ 425. In § 4280.302(a), revise the first sentence of the definition of “Rural or rural area” to read as follows:

**4280.302 Definitions and abbreviations.**

(a) \* \* \*

*Rural or rural area.* Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the most recent decennial Census of the United States (decennial Census), and the contiguous and adjacent urbanized area, and any area that has been determined to be “rural in character” by the Under Secretary for Rural Development, or as otherwise identified in this definition.

\* \* \*

**§ 4280.316 [Amended]**

■ 426. Amend § 4280.316(b)(1)(v) by removing “the latest applicable

decennial census” and adding “the most recent decennial Census” in its place.

**PART 4284—GRANTS**

■ 427. The authority citation for part 4284 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart F also issued under 7 U.S.C.

1932(e).

Subpart G also issued under 7 U.S.C. 1926(a)(11).

Subpart J also issued under 7 U.S.C. 1621 note.

Subpart K also issued under 7 U.S.C. 1621 note.

**Subpart A—General Requirements for Cooperative Service Grant Programs**

**§ 4284.3 [Amended]**

■ 428. Amend § 4284.3 by removing “the latest decennial census” in the definition of “rural and rural area” and adding “the most recent decennial Census” in its place.

**Subpart G—Rural Business Opportunity Grants**

■ 429. In § 4284.603, revise the definitions of “long-term” and “rural and rural area” to read as follows:

**§ 4284.603 Definitions.**

\* \* \* \* \*

*Long-term.* The period of time covered by the three most recent decennial Censuses of the United States to the present.

\* \* \* \* \*

*Rural and rural area.* Any area other than a city or town that has a population of greater than 50,000 inhabitants including the urbanized area contiguous and adjacent to such a city or town. The population figure used must be in accordance with the most recent decennial Census of the United States.

\* \* \* \* \*

**PART 4288—PAYMENT PROGRAMS**

■ 430. The authority citation for part 4288 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989.

**Subpart A—Repowering Assistance Payments to Eligible Biorefineries**

**§ 4288.2 [Amended]**

■ 431. Amend § 4288.2 by removing “the latest decennial census” in the introductory text of the definition of “Rural or rural area” and adding “the most recent decennial Census” in its place.

**PART 4290—RURAL BUSINESS INVESTMENT COMPANY (“RBIC”) PROGRAM**

■ 432. The authority citation for part 4290 continues to read as follows:

Authority: 7 U.S.C. 1989 and 209cc *et seq.*

**Subpart B—Definition of Terms Used in Part 4290**

■ 433. In § 4290.50, revise the introductory text of the definition of “Rural Area” and revise the definition of “Urban Area” to read as follows:

**§ 4290.50 Definition of terms.**

\* \* \* \* \*

*Rural Area* means any area of a State not in a city or town that has a

population of more than 50,000 inhabitants, according to the most recent decennial Census of the United States (decennial Census), or in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be “rural in character” by the Under Secretary for Rural Development, or as otherwise identified in this definition.

\* \* \* \* \*

*Urban Area* means an area containing a city (or its equivalent), or any equivalent geographic area determined by the Census Bureau and adopted by the Secretary for purposes of this definition (about which the Secretary will publish a document in the **Federal**

**Register** from time to time), which had a population of over 150,000 in the most recent decennial Census and the urbanized areas containing or adjacent to that city, both as determined by the Bureau of the Census for the most recent decennial Census.

\* \* \* \* \*

Dated: January 15, 2015.

**Lisa Mensah,**

*Under Secretary, Rural Development.*

Dated: January 23, 2015.

**Michael Scuse,**

*Under Secretary, Farm and Foreign Agricultural Services.*

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# FEDERAL REGISTER

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Part III

## Department of the Interior

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Bureau of Safety and Environmental Enforcement

30 CFR Parts 250 and 254

Bureau of Ocean Energy Management

30 CFR Part 550

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Oil and Gas and Sulphur Operations on the Outer Continental Shelf—  
Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf;  
Proposed Rule

**DEPARTMENT OF THE INTERIOR****Bureau of Safety and Environmental Enforcement****30 CFR Parts 250 and 254****Bureau of Ocean Energy Management****30 CFR Part 550**

[Docket ID: BSEE–2013–0011; 15XE1700DX EX1SF0000.DAQ000 EEEE500000]

RIN 1082–AA00

**Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf**

**AGENCY:** Bureau of Safety and Environmental Enforcement (BSEE); Bureau of Ocean Energy Management (BOEM), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Interior (DOI), acting through BOEM and BSEE, proposes to revise and add new requirements to regulations for exploratory drilling and related operations on the Outer Continental Shelf (OCS) seaward of the State of Alaska (Alaska OCS). The Alaska OCS has the potential to be an integral part of the Nation’s “all of the above” domestic energy strategy. This proposed rule focuses solely on the OCS within the Beaufort Sea and Chukchi Sea Planning Areas (Arctic OCS). The Arctic region is characterized by extreme environmental conditions, geographic remoteness, and a relative lack of fixed infrastructure and existing operations. The proposed rule is designed to ensure safe, effective, and responsible exploration of Arctic OCS oil and gas resources, while protecting the marine, coastal, and human environments, and Alaska Natives’ cultural traditions and access to subsistence resources.

**DATES:** Submit comments by April 27, 2015. BOEM and BSEE may not fully consider comments received after this date. You may submit comments to the Office of Management and Budget (OMB) on the information collection burden in this proposed rule by March 26, 2015. The deadline for comments on the information collection burden does not affect the deadline for the public to comment to BOEM and BSEE on the proposed regulations.

**ADDRESSES:** You may submit comments on the rulemaking by any of the following methods. For comments on this proposed rule, please use Regulation Identifier Number (RIN) 1082–AA00 in your message. For

comments specifically related to the draft Environmental Assessment conducted under the National Environmental Policy Act of 1969 (NEPA), please refer to NEPA in the heading of your message. *See also*, Public Availability of Comments under Procedural Matters.

- Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter BSEE–2013–0011, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. BOEM and BSEE will post all submitted comments.

- Mail or hand-carry comments to the DOI, BSEE: Attention: Regulations and Standards Branch, 381 Elden Street, HE3314, Herndon, Virginia 20170–4817. Please reference “Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf,” 1082–AA00 in your comments, and include your name and return address.

- Send comments on the information collection of this rule to: Interior Desk Officer 1082–AA00, Office of Management and Budget; 202–395–5806 (fax); email: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov). Please also send copies to BSEE by one of the means previously described.

**FOR FURTHER INFORMATION CONTACT:** Mark E. Fesmire, BSEE, Alaska Regional Office, [mark.fesmire@bsee.gov](mailto:mark.fesmire@bsee.gov), (907) 334–5300; John Caplis, BSEE, Oil Spill Response Division, [john.caplis@bsee.gov](mailto:john.caplis@bsee.gov), (703) 787–1364; or David Johnston, BOEM, Alaska Regional Office, [david.johnston@boem.gov](mailto:david.johnston@boem.gov), (907) 334–5200. To see a copy of either information collection request submitted to OMB, go to <http://www.reginfo.gov> (select Information Collection Review, Currently Under Review).

**SUPPLEMENTARY INFORMATION:****Executive Summary**

Although there is currently a comprehensive OCS oil and gas regulatory program, DOI engagement with stakeholders reveals the need for new and revised regulatory measures for exploratory drilling conducted by floating drilling vessels and “jackup rigs” (collectively known as mobile offshore drilling units or MODUs) on the Arctic OCS. The United States (U.S.) Arctic region, as recognized by the U.S. and defined in the U.S. Arctic Research and Policy Act of 1984, encompasses an extensive marine and terrestrial area, but this proposed rule focuses solely on

the OCS within the Beaufort Sea and Chukchi Sea Planning Areas.

BOEM and BSEE have undertaken extensive environmental and safety reviews of potential oil and gas operations on the Arctic OCS. These reviews, along with concerns expressed by environmental organizations and Alaska Natives, reinforce the need to develop additional measures specifically tailored to the operational and environmental conditions of the Arctic OCS. After considering the input provided by various stakeholders and DOI’s direct experience from Shell’s 2012 Arctic operations, BOEM and BSEE have concluded that additional exploratory drilling regulations would enhance existing regulations and would be appropriate for a more holistic Arctic OCS oil and gas regulatory framework.

This proposed rulemaking is intended to provide regulations to ensure Arctic OCS exploratory drilling operations are conducted in a safe and responsible manner that would take into account the unique conditions of Arctic OCS drilling and Alaska Natives’ cultural traditions and need to access subsistence resources. The Arctic region is known for its oil and gas resource potential, its vibrant ecosystems, and the Alaska Native communities, who rely on the Arctic’s resources for subsistence and cultural traditions. The region is characterized by extreme environmental conditions, geographic remoteness, and a relative lack of fixed infrastructure and existing operations. These are key factors in considering the feasibility, practicality, and safety of conducting offshore oil and gas activities on the Arctic OCS.

This proposed rule would add to, and revise existing regulations in, 30 CFR parts 250, 254, and 550 for Arctic OCS oil and gas activities. The proposed rule would focus on Arctic OCS exploratory drilling activities that use MODUs and related operations during the Arctic OCS open-water drilling season. This proposed rule would address a number of important issues and objectives, including ensuring that each operator:

1. Designs and conducts exploration programs in a manner suitable for Arctic OCS conditions;

2. Develops an integrated operations plan (IOP) that would address all phases of its proposed Arctic OCS exploration program and submit the IOP to DOI, acting through its designee, BOEM, at least 90 days in advance of filing the Exploration Plan (EP);

3. Has access to, and the ability to promptly deploy, Source Control and Containment Equipment (SCCE) while drilling below, or working below, the surface casing;

4. Has access to a separate relief rig located so that it could timely drill a relief well in the event of a loss of well control under the conditions expected at the site;

5. Has the capability to predict, track, report, and respond to ice conditions and adverse weather events;

6. Effectively manages and oversees contractors; and

7. Develops and implements an Oil Spill Response Plan (OSRP) that is designed and executed in a manner suitable for the unique Arctic OCS operating environment and has the necessary equipment, training, and personnel for oil spill response on the Arctic OCS.

The proposed rule would further the Nation's interest in exploring frontier areas, such as those in the Arctic region, and would establish specific operating models and requirements for the extreme, changing conditions that exist on the Arctic OCS. The proposed regulations would require comprehensive planning of operations, especially for emergency response and safety systems. The proposed rule would seek to institutionalize a proactive approach to offshore safety. A goal of the proposed rule is to identify possible vulnerabilities early in the planning process so that corrections

could be made in order to decrease the possibility of an incident occurring. The requirements in the proposed rule are also designed to ensure that those plans would be executed in a safe and environmentally protective manner despite the challenges presented by the Arctic.

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**LIST OF ACRONYMS AND REFERENCES**

60-Day report	Report to the Secretary of the Interior, review of Shell's 2012 Alaska offshore oil and gas exploration program	MODU	Mobile offshore drilling units
AIS	Automatic Identification System	NARA	National Archives and Records Administration.
Alaska OCS	OCS Seaward of the State of Alaska	National Arctic Strategy.	President's National Strategy for the Arctic Region issued May 2013.
ANCSA	Alaska Native Claims Settlement Act	NEPA	National Environmental Policy Act of 1969.
APD	Application for Permit to Drill	NOAA	National Oceanic and Atmosphere Administration.
API	American Petroleum Institute	NPDES	National Pollutant Discharge Elimination System.
APM	Application for Permit to Modify	OCS	Outer Continental Shelf.
Arctic OCS	OCS within the Beaufort Sea and Chukchi Sea Planning Areas.	OCSLA	Outer Continental Shelf Lands Act.
ASP	Audit Service Provider	OMB	Office of Management and Budget.
BOEM	Bureau of Ocean Energy Management	OPA	Oil Pollution Act of 1990.
BOP	Blowout Preventer	OSRP	Oil Spill Response Plan.
BP	BP Exploration (Alaska), Inc.	PPCS	Pre-Positioned Capping Stack.
BSEE	Bureau of Safety and Environmental Enforcement.	PRA	Paperwork Reduction Act.
CAP	Corrective Action Plan	RFA	Regulatory Flexibility Act.
CFR	Code of Federal Regulations	RIA	Regulatory Impact Analysis.
CWA	Clean Water Act	RIN	Regulation Identifier Number.
DOCD	Development Operations Coordination Documents.	ROV	Remotely Operated Vehicle.
DOI	Department of the Interior	RP	Recommended Practice.
DPP	Development and Production Plans	SCCE	Source Control and Containment Equipment.
EA	Environmental Assessment	Secretary	Secretary of the Interior.
E.O.	Executive Order	SEMS	Safety and Environmental Management Systems.
EP	Exploration Plan	SIDs	Shut-in Devices.
EPA	Environmental Protection Agency	UMRA	Unfunded Mandates Reform Act of 1995.
ESA	Endangered Species Act	U.S.	United States.
IC	Information Collection	USCG	U.S. Coast Guard.

LIST OF ACRONYMS AND REFERENCES—Continued

60-Day report	Report to the Secretary of the Interior, review of Shell's 2012 Alaska offshore oil and gas exploration program	MODU	Mobile offshore drilling units
ICAS .....	Inupiat Community of the Arctic Slope .....	USFWS .....	U.S. Fish and Wildlife Service.
Initial RIA .....	Initial Regulatory Impact Analysis .....	WCD .....	Worst-Case Discharge.
IOP .....	Integrated Operations Plan .....	Working Group .....	Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska.
ISO .....	International Organization for Standardization.		

**I. Introduction**

The Arctic region is known for its oil and gas resource potential, its thriving and diverse ecosystems, and the Alaska Native communities who rely on the Arctic's resources for subsistence and cultural traditions. The Arctic region is also characterized by extreme environmental conditions, geographic remoteness, and a relative lack of fixed infrastructure and existing operations. These are key factors in considering the feasibility, practicality, and safety of conducting offshore oil and gas activities on the Arctic OCS.

In May 2013, President Obama issued a document entitled, "National Strategy for the Arctic Region (National Arctic Strategy)." The President affirmed that emerging economic opportunities exist in the region, but that "... we must exercise responsible stewardship, using an integrated management approach and making decisions based on the best available information, with the aim of promoting healthy, sustainable, and resilient ecosystems over the long term."

In keeping with the Nation's comprehensive "all of the above" energy strategy to continue to expand safe and responsible domestic energy production, the National Arctic Strategy is intended, among other things, to "reduce our reliance on imported oil and strengthen our Nation's energy security" by working with stakeholders to enable "environmentally responsible production of oil and natural gas." To provide responsible stewardship of the Arctic's environment and resources, the National Arctic Strategy emphasizes the need for integrated and balanced management techniques.

Furthermore, the National Arctic Strategy acknowledges the potential international implications of Arctic oil and gas activities for "other Arctic states and the international community as a whole." The U.S. has committed to do its part to "keep the Arctic region prosperous, environmentally sustainable, operationally safe, secure, and free of conflict[.]" One primary objective outlined in the

implementation plan for the National Arctic Strategy is to "reduce the risk of marine oil pollution while increasing global capabilities for preparedness and response to oil pollution incidents in the Arctic." ([http://www.whitehouse.gov/sites/default/files/docs/implementation\\_plan\\_for\\_the\\_national\\_strategy\\_for\\_the\\_arctic\\_region\\_-\\_fi....pdf](http://www.whitehouse.gov/sites/default/files/docs/implementation_plan_for_the_national_strategy_for_the_arctic_region_-_fi....pdf)). The National Arctic Strategy is an example of the types of action the U.S. is taking to implement its obligations under international agreements, such as the Arctic Council's Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (available at: [www.arctic-council.org/eppr/agreement-on-cooperation-on-marine-oil-pollution-preparedness-and-response-in-the-arctic/](http://www.arctic-council.org/eppr/agreement-on-cooperation-on-marine-oil-pollution-preparedness-and-response-in-the-arctic/)).

**A. Resource Potential**

The Alaska OCS region is estimated to contain a vast amount of undiscovered, technically recoverable oil and gas. According to BOEM's 2011 Assessment of Undiscovered Technically Recoverable Oil and Gas Resources of the Nation's Outer Continental Shelf (mean estimates available at: [www.boem.gov/Oil-and-Gas-Energy-Program/Resource-Evaluation/Resource-Assessment/2011\\_National\\_Assessment\\_Factsheet-pdf.aspx](http://www.boem.gov/Oil-and-Gas-Energy-Program/Resource-Evaluation/Resource-Assessment/2011_National_Assessment_Factsheet-pdf.aspx)), there are approximately 23.6 billion barrels of technically recoverable oil and about 104.4 trillion cubic feet of technically recoverable natural gas in the Beaufort Sea and Chukchi Sea Planning Areas combined. Most of the Alaska OCS resource potential is located off the Arctic coast within the Chukchi Sea and Beaufort Sea Planning Areas. This resource potential has received considerable attention from the oil and gas industry and the U.S. government, and has precipitated the sale of hundreds of leases and the initiation of subsequent exploration activities. The Alaska OCS region, particularly the Beaufort Sea and Chukchi Sea Planning Areas, has the potential to be an integral part of the "all of the above" domestic

energy strategy articulated in the National Arctic Strategy.

**B. Integrated Arctic Management**

As ocean and seasonal conditions continue to change in the Arctic, there will be an increasing number of stakeholders vying for access to the Arctic OCS and the waters above it. Both commercial and recreational activities are increasing as more areas of water open up for longer periods of time due to the increase of melting sea ice. The decrease in summer sea ice raises legitimate concerns regarding changes to the environment and the Arctic resources that Alaska Natives depend on for survival and cultural traditions. Consistent with the Outer Continental Shelf Lands Act (OCSLA), BOEM and BSEE, the Bureaus responsible for managing oil and gas resources on the Arctic OCS, are proposing regulations that take into account the needs of the multiple users who have an interest in the future of the U.S. Arctic region (see 43 U.S.C. 1332(6)).

The U.S. has maintained a longstanding interest in the orderly development of oil and gas resources on the Arctic OCS, while also seeking to ensure the protection of its environment and communities. The U.S. has proceeded cautiously to ensure that laws, regulations, and policies concerning Arctic OCS oil and gas development are created and implemented based on a thorough examination of the multiple factors at play in the unique Arctic environment. BOEM and BSEE have conducted extensive research on potential oil and gas activities in the Arctic OCS in anticipation of operations (see, e.g., [www.bsee.gov/Technology-and-Research/Technology-Assessment-Programs/Categories/Arctic-Research/](http://www.bsee.gov/Technology-and-Research/Technology-Assessment-Programs/Categories/Arctic-Research/)), and have also evaluated the potential environmental effects of such activities (see, e.g., <http://www.boem.gov/akstudies/>). These research projects, along with other initiatives, form the basis for the most recent National policies and directives regarding Alaska



OCS oil and gas development, all of which have guided this proposed rule.

Coordinating the future uses of the Arctic region will require integrated action between and among Federal, state, and tribal governmental entities. On July 15, 2011, President Obama signed Executive Order (E.O.) 13580, establishing an Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska (Working Group), chaired by the Deputy Secretary of DOI. The Working Group is composed of representatives from the DOI, Department of Defense, Department of Commerce, Department of Agriculture, Department of Energy, Department of Homeland Security, the Environmental Protection Agency (EPA), and the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects. It is charged with facilitating “coordinated and efficient domestic energy development and permitting in Alaska while ensuring that all applicable [health, safety, and environmental protection] standards are fully met” (E.O. 13580, sec. 1).

The Working Group was involved in coordinating Federal regulatory and oversight efforts for the 2012 Alaska OCS drilling season and played an important role in BOEM’s and BSEE’s reviews of plans and permits for Shell’s 2012 operations. The Working Group’s report entitled, “Managing for the Future in a Rapidly Changing Arctic, A Report to the President” (March 2013), was the result of substantial collaboration and has also played a significant role in shaping U.S. Arctic policies.

### C. Overview of Proposed Regulations

Although there is currently a comprehensive OCS oil and gas regulatory program, DOI engagement with partners and stakeholders<sup>1</sup> reveals the need for new and enhanced regulatory measures for Arctic OCS exploratory drilling by MODUs. For purposes of this rulemaking, exploratory drilling is considered to be “[a]ny drilling conducted for the purpose of searching for commercial quantities of oil, gas, and sulphur, including the drilling of any additional well needed to delineate any reservoir to enable the lessee to decide whether to proceed with development and production” (30 CFR 250.105 and 30 CFR 550.105 (one of the definitions of “exploration”)).<sup>2</sup>

<sup>1</sup> Tribes, State and local governments, and Federal agencies are “partners.” “Stakeholders” are non-governmental organizations, industry, and other entities.

<sup>2</sup> This proposed rule uses and defines terms that may be similar to terms used in other programs by other Federal agencies; however, the terms and

This proposed rule focuses on Arctic OCS exploratory drilling activities that use MODUs (e.g., jack-ups and anchored drillships) and related operations during the Arctic open-water drilling season (generally late June to early November). After the requirements for exploratory drilling are finalized and applied to those activities, DOI will be able to assess whether it should apply similar requirements to development drilling. BOEM and BSEE will then be in a position to consider developing requirements appropriate for development drilling activities and publish a rulemaking for public notice and comment in the **Federal Register**. The requirements may be the same as the final requirements for exploratory drilling, or BOEM and BSEE may modify these requirements.

The Arctic region is known for its challenging environmental conditions, geographic remoteness, and relative lack of existing infrastructure. This proposed rule builds on and would codify input received from partners and stakeholders, key components of Shell’s 2012 Arctic exploratory drilling program, as well as the additional measures DOI required to ensure Shell’s drilling operations were conducted safely.

Though its actual drilling operations were conducted without incident, Shell experienced a number of challenges during its 2012 exploratory drilling program. In 2013, DOI released a “Report to the Secretary of the Interior, Review of Shell’s 2012 Alaska Offshore Oil and Gas Exploration Program” (60-Day Report) (available at: <http://www.doi.gov/news/pressreleases/upload/Shell-report-3-8-13-Final.pdf>). The 60-Day Report identified a number of lessons learned and recommended practices to ensure future Arctic oil and gas exploration activities continue to be carried out in a safe and responsible manner.

BOEM and BSEE have undertaken extensive environmental and safety reviews of potential oil and gas operations on the Arctic OCS. These reviews, along with concerns expressed by environmental organizations and Alaska Natives, reinforce the need to develop additional measures specifically tailored to the operational and environmental conditions of the Arctic OCS. Arctic OCS operations can be complex, and there are challenges and operational risks throughout every phase of an exploratory drilling

definitions used in this proposed rule are intended to apply only to the BSEE and BOEM regulatory programs covered by this proposed rule, unless otherwise noted.

program. Experience gained during the 2012 Arctic drilling season has led BOEM and BSEE staff to conclude that enhanced and more specific requirements can help ensure that oil and gas activities in the Arctic OCS are conducted in a safe and environmentally responsible manner. After considering the input provided by various stakeholders and DOI’s direct experience from Shell’s 2012 Arctic operations, BOEM and BSEE have concluded that additional exploratory drilling regulations are necessary and appropriate as a part of the Arctic OCS oil and gas regulatory framework.

This proposed rule is a combination of prescriptive and performance-based requirements that address a number of important issues and objectives, including, but not limited to, ensuring that operators:

1. Design and conduct exploration programs in a manner suitable for Arctic OCS Conditions (e.g., using equipment and processes that are capable of performing effectively and safely under extreme weather and sea conditions and in remote locations with relatively limited infrastructure);

2. Develop an IOP that would address all phases of their proposed Arctic OCS exploration program and submit the IOP to DOI, acting through its designee, BOEM, at least 90 days in advance of filing the EP;

3. Have access to, and the ability to promptly deploy, SCCE while drilling below or working below the surface casing;

4. Have access to a separate relief rig located so that it could timely drill a relief well in the event of a loss of well control under the conditions expected at the site;

5. Have the capability to predict, track, report, and respond to ice conditions and adverse weather events;

6. Effectively manage and oversee contractors; and

7. Develop and implement OSRPs that are designed and executed in a manner suitable for the unique Arctic OCS operating environment and that describe the availability of the necessary equipment, training, and personnel for oil spill response on the Arctic OCS.

### D. Potential Costs and Benefits of Proposed Rule

The Initial Regulatory Impact Analysis (RIA) for this proposed rule estimates that, if implemented as proposed, the new regulations would result in economic costs ranging from \$1.1 to 1.2 billion (at discount rates of 7 percent and 3 percent, respectively) over 10 years. The above estimated cost range reflects the increase in costs over

the baseline costs. As discussed in part VI.B.3, the baseline is calculated by estimating the costs associated with current regulatory requirements and industry standards. In general, this includes the requirements imposed by DOI during the 2012 drilling season. However, even though DOI required the availability of a relief rig in 2012, we have conservatively chosen not to include the costs of staging a standby relief rig in the baseline. Although BOEM and BSEE expect that over time, as the number of operating rigs on the Arctic OCS increases, operators will use a second operating rig as a relief rig, in lieu of a dedicated standby relief rig, we have included the capital and activity costs for a standby rig for the first two years (2015–2016) of the 10-year time period in the economic costs of the proposed rule.

While the economic and other benefits of the proposed rule—based primarily on preventing or reducing the severity or duration of catastrophic oil spills—are difficult to quantify, BOEM and BSEE have determined that it is appropriate to proceed with this proposal. Although the probability of a catastrophic oil spill is low, the *Deepwater Horizon* oil spill demonstrated that even such low probability events can have devastating economic and environmental results when they occur. The benefits of the proposed rule include reducing such risks associated with Arctic offshore operations.

Reducing the risks of Arctic offshore operations is particularly important because of the unique significance to Alaska Natives of the fish and marine mammals in the lands and waters around the Arctic OCS; those resources are critical components of the Alaska Natives' livelihood, and they rely on fishing and hunting for traditional cultural purposes and for subsistence. Similarly, many other Americans place a very high value on protecting the health of the ecosystem, including the sensitive environment and wildlife, of this largely frontier area. Thus, the impact of a catastrophic oil spill, while a remote possibility, would have extremely high cultural and societal costs, and prevention of such a catastrophe would have correspondingly high cultural and societal benefits.

The proposed requirements—specifically tailored to the Arctic OCS—would provide additional specificity regarding BOEM's and BSEE's expectations for safe and responsible development of Arctic resources and would outline the particular actions that lessees, owners and operators must take

in order to meet those expectations. BSEE and BOEM do not anticipate that these proposed requirements, or their associated costs, would prevent lessees and operators from conducting exploratory drilling on their leases. In fact, the additional clarity and specificity provided by the proposed rule should help the oil and gas industry to plan better and to more effectively conduct exploratory drilling on the Arctic OCS, which in turn should result in development and production of oil and gas with lower risk and fewer delays than under the current rules. Since the potential economically recoverable oil and gas resources from the Arctic OCS are abundant, as discussed later in this proposed rule, the positive impact of such production on U.S. energy independence and energy security could be substantial. Thus, this proposed rule would help achieve the National Arctic Strategy goals of protecting the unique and sensitive Arctic ecosystems, as well as the subsistence, culture and traditions of the Alaska Native communities, while reducing reliance on imported oil and strengthening National energy security.

## II. Background

### A. Statutory and Regulatory Overview

#### 1. Outer Continental Shelf Lands Act (OCSLA)

The OCSLA, 43 U.S.C. 1331 *et seq.*, was first enacted in 1953, and substantially amended in 1978, when Congress established a National policy of making the OCS “available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other National needs” (43 U.S.C. 1332(3)). In addition, Congress emphasized the need to develop OCS mineral resources in a safe manner “by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health” (43 U.S.C. 1332(6)). The Secretary of the Interior (Secretary) administers the OCSLA's provisions relating to the leasing of the OCS and regulation of mineral exploration and development operations on those leases. The Secretary is authorized to prescribe “such rules and regulations as may be necessary to carry out [OCSLA's] provisions . . . and may at any time

prescribe and amend such rules and regulations as [s]he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the [OCS] . . .” which “shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of [OCSLA]” (43 U.S.C. 1334(a)).

Prior to commencing exploration for oil and gas on an OCS lease tract, the statute and BOEM regulations require lessees to submit an EP to the Secretary for approval (43 U.S.C. 1340(c)(1); 30 CFR 550.201(a)). An EP must include information such as a schedule of anticipated exploration activities, equipment to be used, the general location of each well to be drilled, and any other information deemed pertinent by the Secretary (43 U.S.C. 1340(c)(3); 30 CFR 550.211 through 550.228)).

However, approval of an EP does not automatically permit the lessee to proceed with exploratory drilling. The lessee must submit to the Secretary an Application for Permit to Drill (APD) which must be approved before a lessee may drill a well (43 U.S.C. 1340(d); 30 CFR 250.410).

The Secretary delegated most of the responsibilities under the OCSLA to BOEM and BSEE, both of which are charged with administering and regulating aspects of the Nation's OCS oil and gas program. BOEM and BSEE work to promote safety, protect the environment, and conserve offshore resources through vigorous regulatory oversight. BOEM manages the development of the Nation's offshore energy resources in an environmentally and economically responsible way. BOEM's functions include leasing; exploration, development and production plan administration; environmental analyses to ensure compliance with NEPA; environmental studies; resource evaluation; economic analysis; and management of the OCS renewable energy program. BSEE performs offshore regulatory oversight and enforcement to ensure safety and environmentally sound performance during operations, and the conservation of offshore resources, by, among other things, evaluating drilling permits, and conducting inspections to ensure compliance with laws, regulations, lease terms, and approved plans and permits.

BOEM evaluates EPs, and BSEE evaluates APDs, to determine whether the operator's proposed activities meet the OCSLA's standards and each Bureau's regulations governing offshore exploration. The regulatory requirements include, but are not

limited to, determining whether the proposed drilling operation:

i. Conforms to OCSLA, as amended, its applicable implementing regulations, lease provisions and stipulations, and other applicable laws;

ii. Is safe;

iii. Conforms to sound conservation practices and protects the rights of the U.S. and mineral resources of the OCS;

iv. Does not unreasonably interfere with other uses of the OCS; and

v. Does not cause undue or serious harm or damage to the human, marine, or coastal environments (30 CFR 250.101 and 250.106; 30 CFR 550.101 and 550.202).

Based on these evaluations, BOEM and BSEE will approve the lessee's (or operator's) EP and APD, require the lessee (or operator) to modify its submissions, or disapprove the EP or APD (30 CFR 250.410; 30 CFR 550.233).

2. The Oil Pollution Act of 1990 (OPA) and Clean Water Act (CWA)

Congress passed the OPA, 33 U.S.C. 2701 *et seq.*, following the Exxon Valdez oil spill. The OPA amended the CWA, 33 U.S.C. 1251 *et seq.*, by, among other things, adding OSRP provisions for offshore facilities. The OPA provides for prompt federally coordinated responses to offshore oil spills and for compensation of spill victims. It also calls for the issuance of regulations prohibiting owners and operators of offshore facilities from operating or handling, storing, or transporting oil until:

i. They have prepared and submitted "a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil . . . ;"

ii. The plan "has been approved by the President;" and

iii. The "facility is operating in compliance with the plan" (OPA § 4202(a), codified at 33 U.S.C. 1321(j)(5)(A)(i) and (F)(i)-(ii)).

E.O. 12777 (October 18, 1991) authorized the Secretary to carry out the functions of 33 U.S.C. 1321(j)(5) and (j)(6)(A). This includes the promulgation of regulations governing the obligation to prepare and submit OSRPs, the review and approval of OSRPs, and the periodic verification of spill response capabilities related to these plans. Those applicable regulations are administered by BSEE and are found at 30 CFR parts 250 and 254. E.O. 12777 also authorized the Secretary to implement 33 U.S.C. 1321(j)(1)(C), which provides for the issuance of regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from . . . offshore facilities, and to contain such discharges. . . ."

#### B. Factual Overview of the Alaska OCS Region

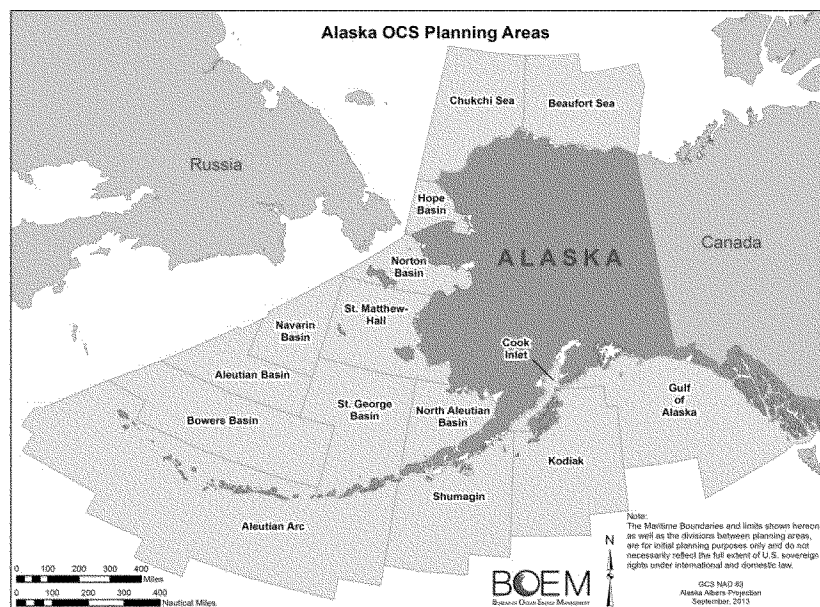
##### 1. The Arctic OCS Oil and Gas Resource Potential Has Attracted Significant Attention Over the Past Three Decades

There has been a renewed interest in the oil and gas potential of the Alaska

OCS since the first exploratory wells were drilled in the late 1970s. The majority of exploratory drilling north of the Arctic Circle has occurred where the greatest oil and gas resource potential exists, namely the Beaufort Sea and Chukchi Sea Planning Areas (defined in this proposed rule as the Arctic OCS). A total of 30 exploratory wells have been drilled on the Beaufort OCS since the first Federal OCS leases were offered, and more wells have been drilled beneath the near-shore Beaufort Sea under the jurisdiction of the State of Alaska (*see* BOEM Alaska Region Web site at: <http://www.boem.gov/About-BOEM/BOEM-Regions/Alaska-Region/Historical-Data/Index.aspx>). The Chukchi Sea Planning Area has a more limited history of leasing and exploration. Only a total of five exploratory wells have been drilled (*see* BOEM Alaska Region Web site at: [www.boem.gov/About-BOEM/BOEM-Regions/Alaska-Region/Historical-Data/Index.aspx](http://www.boem.gov/About-BOEM/BOEM-Regions/Alaska-Region/Historical-Data/Index.aspx)) and no site was considered commercially viable for development during that time.

There have been only three exploratory wells drilled on the Arctic OCS since 1994—the 2003 exploratory well near Prudhoe Bay in the Beaufort Sea and Shell's two "top hole" wells drilled in 2012 (*see* BOEM Assessment of Undiscovered Technically Recoverable Oil and Gas Resources of the Nation's Outer Continental Shelf (2011)).

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Except for the Northstar project, operated by BP Exploration (Alaska), Inc. (BP) from State submerged lands in the Beaufort Sea, no production has yet resulted from any of the leases.<sup>3</sup>

There are currently no active Alaska OCS leases located anywhere outside of the Beaufort Sea and Chukchi Sea Planning Areas. The oil and gas industry's interest in offshore oil and gas exploration on the Arctic OCS remains high despite the pace of exploration and the challenges of operating in this unique environment.

## 2. Challenges to Arctic Oil and Gas Operations

The challenges to conducting operations and responding to emergencies in the extreme and variable environmental and weather conditions in the Arctic are severe. Both the Beaufort Sea and Chukchi Sea Planning Areas experience sub-freezing temperatures during most of the year, extended periods of low-light visibility, significant fog cover in the summer, strong winds and currents, strong storms that produce freezing spray and dangerous sea states, snow, and significant ice cover. During the fall (September–November), conditions become increasingly inhospitable as air temperatures decrease, wind speeds increase, storms become more frequent, and sea ice begins to form, all of which make Arctic OCS exploratory drilling operations more challenging (*see* Environmental Assessments for Shell Offshore, Inc.'s Revised Outer Continental Shelf Lease Exploration Plan, Camden Bay, Beaufort Sea, Alaska (2011) and Shell Gulf of Mexico, Inc.'s Revised Chukchi Sea Exploration Plan Burger Prospect (2011)); BOEM Alaska Region Web site at: <http://www.boem.gov/About-BOEM/BOEM-Regions/Alaska-Region/Environment/Environmental-Analysis/Environmental-Impact-Statements-and—Major-Environmental-Assessments.aspx>). Other challenges to conducting operations and responding to emergencies on the Arctic OCS include the geographical remoteness and relative lack of established infrastructure to support oil and gas operations.

### *C. Partner and Stakeholder Engagement in Preparation for This Proposed Rule*

DOI used the recommendations from the 60-Day Report as a basis for a series of discussions with multiple partners and stakeholders who provided valuable

input regarding potential approaches to regulating oil and gas operations on the Arctic OCS. BOEM and BSEE recognize the importance of the Arctic region to a number of partners and stakeholders with varying positions on oil and natural gas development in the region. Both Bureaus engaged in discussions with Alaska Native and State partners, and with environmental and industry stakeholders, in advance of publishing this proposed rule. Those discussions addressed the recommendations from the 60-Day Report, as well as information regarding operating conditions and challenges in the Arctic. The then-Acting Assistant Secretary for Land and Minerals Management, along with DOI staff from headquarters and the Alaska Region, held three listening sessions and a series of meetings in Alaska over the course of several weeks in June 2013. Representatives of DOI also met with conservation organizations, the Mayor of the North Slope Borough, the Alaska Eskimo Whaling Commission, the Inupiat Community of the Arctic Slope (ICAS), the Native Village of Barrow, two Alaska Native Claims Settlement Act (ANCSA) corporations, oil and gas industry representatives, State of Alaska officials, and other local government representatives.

DOI considered the suggestions and concerns of all partners and stakeholders to produce a proposed rule that balances maximizing oil and gas resource exploration on the Arctic OCS, in furtherance of the Nation's energy security, with appropriate safeguards to protect human safety and the unique Arctic environment, as well as the cultural sensitivities and subsistence needs of the Alaska Native communities that might be affected by oil and gas development in the Arctic.

#### 1. Alaska Natives

DOI heard a variety of perspectives from Alaska Natives during its outreach in advance of the rulemaking, including interest in the potential economic opportunities from oil and gas development. However, the overriding concern expressed by Alaska Natives is the potential for adverse impacts from oil and gas operations on the marine environment and its resources, including marine mammals, such as bowhead whales. Alaska Natives requested that the DOI evaluate the extent to which oil and gas activities may adversely affect marine resources of the waters overlying the Arctic OCS and the subsistence harvest practices of Alaska Natives. In particular, the marine mammal fauna of the Beaufort and Chukchi Seas are among the most

diverse in the world and are of high scientific and public interest, and many are also important for subsistence.

Future exploratory drilling could affect subsistence users in the Arctic region. Subsistence harvests differ among Alaska Native coastal communities. However, the bowhead whale is the most important marine mammal species to a majority of Arctic coastal communities because it is the preferred meat and it provides a unique and powerful cultural basis for sharing and community cooperation.

Subsistence practices are a highly valued aspect of Alaska Native culture. These practices are an important facet of Alaska Native economies because they provide viable and essential means for families to support themselves in this remote environment. The sharing of subsistence resources also helps maintain traditional family and community organizations. In addition to their dietary benefits, subsistence resources provide special foods for religious and social occasions, and materials for personal and family use. Subsistence hunting also links Alaska Native communities to the larger market economy. Many households within the communities earn money from selling art work from the crafting of whale baleen and walrus ivory, and from clothing made from fur-bearing mammals.

The Alaska Eskimo Whaling Commission, the North Slope Borough, and others requested that DOI consider marine mammals' health as a critical part of this proposed rule. Throughout the rule, BOEM and BSEE have proposed elements designed to increase safety of oil and gas exploration in ways that would help protect marine mammals by reducing the likelihood and/or severity of oil spills. The Alaska Eskimo Whaling Commission and its whaling captains have worked with BOEM to help document traditional knowledge pertaining to bowhead whales, including movement and behavior. Bowhead hunters are concerned that the effects of offshore oil and gas exploration might displace migrating bowhead whales.

Accordingly, BSEE proposes to revise § 250.300(b) in order to: (i) Require operators to capture all petroleum-based mud and associated cuttings that result from Arctic OCS exploratory drilling operations to prevent their discharge into the marine environment; and (ii) clarify the Regional Supervisor's discretion to require operators to capture water-based mud and associated cuttings from Arctic OCS exploratory drilling (after completion of the hole for the conductor casing) to prevent their

<sup>3</sup> BP has transferred its interests in the Northstar project to Hilcorp. Hilcorp is now the operator of that project.

discharge into the marine environment, based on factors such as the proximity of exploratory drilling operations to subsistence hunting and fishing locations or the extent to which such discharges might cause marine mammals to alter their migratory patterns in a manner that interferes with subsistence activities or that might otherwise adversely affect marine mammals, fish, or their habitat(s).

Given the importance of subsistence hunting and other activities to the Alaska Native communities, operators are encouraged to work directly with interested parties to help mitigate potential impacts to subsistence activities. In addition, BOEM will continue to fund and support studies to better understand impacts from OCS operations on marine mammals and subsistence activities.<sup>4</sup>

The North Slope Borough also expressed concern that oil and gas development not overwhelm local infrastructure, energy supplies, and services, and that local residents be provided the capacity—both in terms of training and resources—to protect their communities and important subsistence use areas. For this reason, DOI proposes to require operators to provide information about their plans to minimize the impact of their exploratory drilling operations on community infrastructure and their plans to provide the communities with oil spill cleanup training and resources.

## 2. Environmental Organizations

DOI also met directly with environmental organizations to review and discuss recommendations for Arctic oil and gas regulations. The PEW Charitable Trusts requested that BSEE revise 30 CFR 250.447 in order to require blowout preventer (BOP) pressure testing every 7 days for drilling and completion operations (an increase from every 14 days). BSEE proposes to amend the language in § 250.447 in order to require operators on the Arctic OCS to pressure test the BOP system every 7 days during exploratory drilling operations. This proposed requirement is also a safety measure included in Shell's 2012 Arctic exploratory drilling program. Additionally, BSEE is proposing to add a new § 250.471, which would require that a capping

stack be available and positioned to arrive at the well within 24 hours after a loss of well control and a cap and flow system and that a containment dome be available and positioned to arrive at the well within 7 days after a loss of well control.

The Wilderness Society requested that BSEE consider implementing Arctic-specific provisions for OSRPs. BSEE proposes to add several requirements for OSRPs in this rule. In particular, BSEE proposes to require that operators conducting exploratory drilling on the Arctic OCS account for how they would increase oil encounter rates and the effectiveness of spill response techniques and equipment when sea ice is present. BSEE also proposes to add new provisions to 30 CFR part 254 for Arctic OCS exploratory drilling operators to, among other things, account for enhanced oil spill response training and exercises, as well as address the maintenance of response capabilities in the face of seasonal gaps in operations.

## 3. Oil and Gas Operators

DOI held further meetings throughout the summer of 2013 with individual oil and gas companies to hear their perspectives on possible regulations for Arctic OCS operations. The oil and gas operators emphasized a preference for performance-based rules as opposed to prescriptive rules, and also stressed the need for early engagement with the agencies in order to achieve up-front regulatory consistency. While elements of the proposed rule are prescriptive in nature, BOEM and BSEE endeavored to identify opportunities where performance-based requirements were feasible and would achieve the Bureau's goals. For these reasons, among others, BOEM proposes to add a new requirement that operators submit an IOP for their proposed Arctic exploratory drilling operations and describe at an early point in the planning process how their exploratory drilling program would be designed and conducted in an integrated manner suitable for Arctic OCS Conditions. The IOP process is intended to facilitate the prompt sharing of information among the relevant Federal agencies (e.g., BOEM, BSEE, U.S. Fish and Wildlife Service (USFWS), U.S. Coast Guard (USCG), National Oceanic and Atmospheric Administration (NOAA), U.S. Army Corps of Engineers, EPA) and the State of Alaska. The IOP process would also provide the relevant agencies an early opportunity to engage in a meaningful and constructive dialogue with operators and each other.

The goal of the IOP and the enhanced and early dialogue is to have a well-planned, safe operation. Early communication on planning is also anticipated to minimize the potential for project delays.

## D. Expected Benefits Justifying Potential Costs

The initial RIA for this proposed rule estimates that it would result in economic costs ranging from \$1.1 to 1.2 billion, discounted at 7 percent and 3 percent respectively, over 10 years. The above estimated cost range reflects the increase in costs over the baseline costs, as discussed elsewhere in this notice.

While many of the economic and other benefits of the proposed rule—based primarily on preventing or reducing the severity or duration of catastrophic oil spills—are difficult to quantify, BOEM and BSEE have determined that the benefits of the proposed rule would justify its potential costs and that it is appropriate to proceed with this proposal. The probability of a catastrophic oil spill is very low; however, the *Deepwater Horizon* oil spill demonstrated that even such low probability events can have devastating economic and environmental results. As of October 2014, by its own account, BP spent over \$14 billion for cleanup and response operations related to the *Deepwater Horizon* oil spill. The benefits of the proposed rule would accrue from a relief rig, increased safety measures, and other requirements that are expected to reduce the potential for an incident resulting in an oil spill associated with Arctic offshore operations and, if an incident occurs, to reduce the duration of a spill.

The Arctic OCS and its surrounding land and waters have a unique significance to Alaska Natives, who rely on them for traditional cultural purposes and depend on them for subsistence. Similarly, many other Americans place a very high value on protecting the ecosystem, including the sensitive environment and wildlife, of this largely frontier area. Thus, prevention of a catastrophic oil spill, and reduction of the duration of a spill if one occurs, would have extremely important, even though largely unquantifiable, cultural and societal benefits for the Nation.

Moreover, as explained elsewhere, this proposed rule would help achieve the National Arctic Strategy goals of protecting the unique and sensitive Arctic ecosystems, as well as the subsistence needs, culture and traditions of the Alaska Native communities, while reducing reliance

<sup>4</sup> BOEM's Environmental Studies Program has made significant investments into studying potential impacts from operations related to oil and gas exploration. For example, BOEM has funded bowhead whale studies incorporating Traditional Ecological Knowledge and tagging data to learn more about bowhead whale migration through the Chukchi Sea in the fall and winter (Quakenbush *et al.*, 2010).

on imported oil and strengthening National energy security. The proposed requirements—which are specifically tailored to the Arctic OCS—would provide additional clarity and specificity regarding BOEM’s and BSEE’s expectations for safe and responsible development of Arctic resources and the particular actions that lessees, owners and operators must take in order to meet those expectations. This additional clarity and specificity is intended to help the oil and gas industry to plan better and to more effectively conduct exploratory drilling on the Arctic OCS, resulting in the development and production of oil and gas with lower risk and fewer delays than have occurred under the current rules. According to BOEM’s 2011 Assessment of Undiscovered Technically Recoverable Oil and Gas Resources of the Nation’s Outer Continental Shelf, there are approximately 17.8 billion barrels of economically recoverable oil and about 50.1 trillion cubic feet of economically recoverable natural gas in the Beaufort Sea and Chukchi Sea Planning Areas combined. Thus, the impact of production in the Arctic region on U.S. energy independence and energy security could be substantial.

### III. Proposed Regulations for Arctic OCS Exploratory Drilling

The existing OCS oil and gas regulatory regime is extensive and covers all offshore facilities or operations in any OCS region, as appropriate and applicable. BOEM and BSEE use these regulations in their respective oversight of OCS leasing, exploration, development, production, and decommissioning. Depending on the type of activity, operators are subject to the same regulatory requirements, such as: application procedures and information requirements for exploration, development, and production activities; pollution prevention and control; safety requirements for casing and cementing and the use of a BOP and diverter systems; design, installation, use and maintenance of OCS platforms to ensure structural integrity and safe and environmentally protective operations; decommissioning; development and implementation of Safety and Environmental Management Systems (SEMS); and preparation and submission of OSRPs (*see generally* 30 CFR parts 250, 254, and 550).

The existing regulations also contain provisions that apply to specific regions or atypical activities or operating conditions, especially, for example, where drilling occurs in deep water or

in a “frontier” area (typically characterized by its remote location and limited infrastructure and operational history, such as the Arctic OCS region). In these cases, BOEM and BSEE have special requirements, such as information and design requirements for deep-water development projects (§§ 250.286 through 250.295); use of appropriate equipment, third-party audits, and contingency plans in frontier areas or other areas subject to subfreezing conditions (§§ 250.417(c) and 250.418(f)); the placement of subsea BOP systems in mudline cellars when drilling occurs in areas subject to ice-scouring (§ 250.451); and emergency plans and critical operations and curtailment procedures information in the Alaska OCS Region (§§ 550.220 and 550.251).

Though there is currently a comprehensive OCS oil and gas regulatory program, there is a need for new and amended regulatory measures for Arctic OCS exploratory drilling by MODUs. These proposed regulations, in combination with existing regulations (which would continue to apply to Arctic OCS operations unless otherwise expressly stated), are intended to ensure that exploratory drilling operations are well planned from the outset and then conducted safely and responsibly in relation to the unique Arctic environment and the local communities that are closely connected to the region and its resources. The key elements of the proposed rule are:

*A. Measures That Address Recommendations*—The proposed rule addresses recommendations contained in several recent reports on OCS oil and gas activities (*e.g.*, the Arctic Council, Arctic Offshore Oil and Gas Guidelines (2009); the National Commission on the BP *Deepwater Horizon* Oil Spill and Offshore Drilling (2011); Ocean Energy Safety Advisory Committee Recommendations (2013); DOI’s 60-Day Report (2013); the Working Group’s report entitled, “Managing for the Future in a Rapidly Changing Arctic, A Report to the President” (March 2013); the National Arctic Strategy (May 2013); and the Arctic Council, Arctic Offshore Oil and Gas Guidelines: Systems Safety Management and Safety Culture (March 2014)).

*B. IOP Requirement* - During exploratory drilling operations on the Arctic OCS, operators may face substantial environmental challenges and operational risks throughout every phase of the endeavor, including preparations, mobilization, in-theater drilling operations, emergency response and preparedness, and demobilization. Thorough advanced planning is critical

to mitigating these challenges and risks. One of the key components of this proposed rule is a requirement that operators explain how their proposed Arctic OCS exploratory drilling operations would be fully integrated from start to finish in a manner suitable for Arctic OCS Conditions and that they provide this information to DOI at an early stage of the planning process.

This rule proposes to require that operators develop and submit an IOP to DOI, acting through its designee, BOEM, at least 90 days in advance of filing their EP. The purpose of the IOP is to describe, at a strategic or conceptual level, how exploratory drilling operations will be designed, executed, and managed as an integrated endeavor from start to finish. The IOP is intended to be a concept of operations that would include a description of the various aspects of an operator’s proposed exploratory drilling activities and supporting operations and how the operator’s program would be designed and conducted in a manner that accounts for the challenges presented by Arctic OCS Conditions. The primary issues DOI would expect operators to address relative to Arctic OCS Conditions include, but are not limited to:

1. Vessel and equipment design and configurations;
2. The overall schedule of operations, including contractor work on critical components;
3. Mobilization and demobilization operations and maintenance schedule(s);
4. In-theater drilling program objectives and timelines for each objective;
5. Weather and ice forecasting and management capabilities;
6. Contractor management and oversight; and
7. Preparation and staging of spill response assets.

DOI recognizes that other Federal agencies have primary oversight responsibility for some of the previously listed activities. Upon receipt of the IOP, DOI would engage with members of the Working Group and promptly distribute the IOP to the State of Alaska and Federal government agencies involved in the review, approval, or oversight of various aspects of OCS operations.

However, the IOP process would not require agencies to review or approve the IOP or an operator’s planned activities. The IOP is a conceptual, informational document designed to ensure that an operator pays thorough and early attention to the full suite of regulated activities, and to give

regulatory agencies a preview of an operator's approach to regulatory compliance and integrated planning. Thus, the IOP would enable relevant agencies to familiarize themselves, early in the planning process, with the operator's overall proposed program from start to finish. This, in turn, would allow DOI and those agencies to coordinate and provide early input to the operator regarding potential issues presented by the proposed activities with respect to any future plan approvals and permitting requirements, including aspects of the program that might require additional details or refinement. The proposed IOP requirement—and the proposed rule in general—would not, however, interfere with or supplant operators' obligations to comply with all other applicable Federal agency requirements. Each agency that receives an IOP would continue to review the relevant details of an operator's planned activities for compliance with that agency's regulatory requirements in the appropriate manner and at the appropriate time under its own regulatory program.

*C. SCCE and Relief Rig Capabilities—*In Arctic OCS exploratory drilling, there is a need for operators to demonstrate that they would have access to, and could deploy, well control and containment resources that would be adequate to promptly respond to a loss of well control. This equipment is already readily available and accessible in the Gulf of Mexico due to the level of activity in that area. Ensuring that operators have all necessary redundancies in place is critical, as there is no guarantee that a single measure could control or contain a worst-case discharge (WCD). Therefore, BSEE proposes to require operators who use a MODU for Arctic OCS exploratory drilling to have access to, and the ability to deploy, SCCE (e.g., a capping stack, cap and flow system, and containment dome) within the timeframes discussed elsewhere in this proposed rule and that the SCCE be capable of functioning in Arctic OCS Conditions. BSEE also proposes that operators have access to a separate relief rig that would be staged at a location such that it could arrive on site and be capable of drilling a relief well under anticipated Arctic OCS Conditions within specified timeframes. This equipment is fundamental to safe and responsible operations on the Arctic OCS, where existing infrastructure is sparse, the geography and logistics make bringing equipment and resources into the region challenging, and the time available to mount response operations

is limited by changing weather and ice conditions, particularly at the end of the drilling season. Operators may request approval of alternative compliance measures under existing regulations, if they can demonstrate that such alternative equipment or procedures could provide a level of safety and environmental protection equal to or surpassing the protection provided by the proposed SCCE and relief rig requirements (30 CFR 250.141). This provision enables operators to request approval for innovative technological advancements that may provide them additional flexibility, provided that the operator can establish that such technology provides at least the same level of protection as the proposed requirements.

*D. Planning for the Variability and Challenges of the Arctic OCS Conditions—*Reliable weather and ice forecasting play a significant role in ensuring safe operations on the Arctic OCS. Advanced forecasting and tracking technology, information sharing among industry and government, and local knowledge of the operating environment are essential to managing the substantial challenges and risks that Arctic OCS Conditions pose for all offshore operations. In light of the threats posed by ice and extreme weather events, BOEM and BSEE propose to require that operators include in their IOPs, EPs, and APDs, at appropriate levels of specificity for each document, a description of their weather and ice forecasting capabilities for all phases of their exploration program and their alert procedures and thresholds for activating ice and weather management systems. Once operations commence, operators would also be required to:

1. Notify BSEE immediately of any sea ice movement or condition that has the potential to affect operations or trigger ice management activities; and
2. Notify BSEE of the start and termination of ice management activities and submit written reports after completing such activities.

*E. Arctic OCS Oil Spill Response Preparedness—*Operators need to be prepared for a quick and effective response in the event of an oil spill on the Arctic OCS and be ready to coordinate activities with the Federal government and other stakeholders. The OSRPs and related activities should be tailored to the unique Arctic OCS operating environment to ensure that operators have the necessary equipment, training, and personnel for the Arctic OCS. Among other things, this rulemaking would establish specific planning requirements to maximize the application of oil spill response

technology and ensure a coordinated response system that is designed to address the challenges inherent to the Arctic region.

*F. Reducing Pollution from Arctic OCS Exploratory Drilling Operations—*Partners, primarily Alaska Natives, and stakeholders have expressed concern that mud and cuttings from exploratory drilling could adversely affect marine species (e.g., whales and fish) and their habitat and compromise the effectiveness of subsistence hunting activities. Existing environmental analyses support these concerns and also demonstrate that such discharges could affect water quality, benthic habitat, and marine organisms within the localized area (see, e.g., Shell Gulf of Mexico, Inc.'s Revised Chukchi Sea Exploration Plan, Burger Prospect Environmental Assessment (2011)). BSEE proposes to require the capture of all petroleum-based mud and associated cuttings from Arctic OCS exploratory drilling operations to prevent their discharge into the marine environment. The new provision would also clarify the Regional Supervisor's discretionary authority to require that operators capture all water-based mud and associated cuttings from Arctic OCS exploratory drilling operations (after completion of the hole for the conductor casing) to prevent their discharge into the marine environment. This discretion would be exercised based on various factors such as the proximity of exploratory drilling operations to subsistence hunting and fishing locations or the extent to which such discharges might cause marine mammals to alter their migratory patterns in a manner that interferes with subsistence activities or might adversely affect marine mammals, fish, or their habitat(s).

*G. Oversight, Management, and Accountability of Operations and Contractor Support—*An effective risk management framework at the beginning of a project incorporates many components, including planning, vessel design, contractor selection, and an assessment of regulatory requirements for all facets of the project. DOI proposes to require that operators provide an explanation, at a conceptual level, of how they would apply their oversight and risk management protocols to both personnel and contractors to support safe and responsible exploratory drilling on the Arctic OCS. It should be noted that these proposed regulations, and DOI's existing regulations concerning OCS oil and gas operations, would require varying levels of information about operator safety and oversight

management at progressive stages of the planning and approval process. This would start with the most general information and narrow down to increasing levels of detail with successive regulatory submittals, as the project would proceed from planning to implementation.

In addition, the proposed rule would require Arctic OCS operators to:

1. Report threatening sea ice conditions and ice management activities, and unexpected operational issues that could result in a loss of well control;
2. Increase their BOP pressure testing frequency;
3. Conduct real-time monitoring of various aspects of well operations, *e.g.*, the BOP control system;
4. Increase their SEMS auditing frequency; and
5. Enhance their oil spill preparedness and response capabilities for Arctic OCS operations.

A summary of the major provisions of this rulemaking follows.

#### IV. Section-By-Section Discussion

This portion of the preamble provides an explanation of the specific regulatory changes proposed in this rule and why they are necessary. At the outset, this discussion addresses the proposed definitions of the terms *Arctic OCS* and *Arctic OCS Conditions* for use in both BOEM's and BSEE's regulations in order to provide context for the rest of the proposed provisions. Since this is a joint BOEM and BSEE proposed rule, the remainder of the Section-by-Section discussion is organized according to how operators would seek to comply with the proposed regulations, rather than the order in which they would appear in the Code of Federal Regulations. After introducing the definitions of *Arctic OCS* (for purposes of proposed §§ 250.105, 254.6, and 550.105) and *Arctic OCS Conditions* (for purposes of proposed §§ 250.105 and 550.105), the Section-by-Section discussion provides an explanation of the remainder of BOEM's proposed regulations (*i.e.*, proposed §§ 550.105, 550.200, 550.204, 550.206, and 550.220), and then follows with the remainder of BSEE's proposed regulations (*i.e.*, proposed §§ 250.105, 250.188, 250.198, 250.300, 250.402, 250.418, 250.447, 250.452, 250.470, 250.471, 250.472, 250.473, and 250.1920; proposed §§ 254.6, 254.55, 254.65, 254.70, 254.80, and 254.90).

Although BSEE permitting and operational requirements appear earlier in Title 30 of the CFR at Part 250, with the BOEM requirements following in 30 CFR part 550, in practice the IOP and EP

phases governed by the 30 CFR part 550 regulations would precede the drilling approval and oversight phases governed by 30 CFR part 250 (operations). Requirements to prepare for an oil spill, which are contained in 30 CFR part 254, may be met at any time before handling, storing, or transporting oil in operations BSEE permits under Part 250. Finally, the Section-by-Section discussion includes a process flowchart of BOEM's and BSEE's current regulatory framework for Arctic OCS exploratory drilling and how the proposed requirements would be integrated into that framework.

#### *A. Definitions (§§ 250.105, 254.6, and 550.105)*

##### Arctic OCS

For the purposes of this proposed rulemaking, *Arctic OCS* is defined as the Beaufort Sea and Chukchi Sea Planning Areas, as described in the Proposed Final OCS Oil and Gas Leasing Program for 2012–2017 (June 2012), available at [www.boem.gov/uploadedFiles/BOEM/Oil\\_and\\_Gas\\_Energy\\_Program/Leasing/Five\\_Year\\_Program/2012-2017\\_Five\\_Year\\_Program/PFP%2012-17.pdf](http://www.boem.gov/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/Five_Year_Program/2012-2017_Five_Year_Program/PFP%2012-17.pdf) (see pp.21–24). This definition would appear in §§ 250.105, 254.6, and 550.105. As described previously, BOEM and BSEE have determined that these areas are both the subject of current exploration and development interest and subject to conditions that present significant challenges to such operations.

##### Arctic OCS Conditions

Sections 250.105 and 550.105 would be revised to add a definition for *Arctic OCS Conditions*. The definition is necessary because these proposed regulations are designed largely around the particular challenges presented by Arctic OCS Conditions. The term *Arctic OCS Conditions* would be defined to describe both the environmental conditions and functional characteristics (*e.g.*, geographic remoteness, limited infrastructure, subsistence hunting areas) that oil and gas operators can reasonably expect to encounter during exploratory drilling operations and when responding to a loss of well control on the Arctic OCS. Depending on the time of year, relevant environmental conditions and the proposed definition include, but are not limited to, the following: “extreme cold, freezing spray, snow, extended periods of low light, strong winds, dense fog, sea ice, strong currents, and dangerous sea states.” This definition would not affect or alter any other existing Federal regulatory requirements.

It is crucial for OCS oil and gas operators to have a clear understanding of the conditions they would likely encounter during exploratory drilling operations and when responding to a loss of well control on the Arctic OCS. Offshore oil and gas exploration involves inherent risks to human safety and the environment. If not effectively addressed, Arctic OCS Conditions could multiply these risks. Thus, the proposed definition also recognizes that “the Arctic's remote location, limited infrastructure, and existence of subsistence hunting and fishing areas are also characteristic of the Arctic region” and must be considered to ensure safe operations and minimize impacts to the environment and to other users of the area. Addressing these factors would enable industry to proactively safeguard people, facilities, equipment, and the environment.

#### *B. Additional Regulations Proposed by BOEM*

##### Definitions (§ 550.200)

The acronym “IOP”—meaning Integrated Operations Plan—would be inserted into the proper alphabetical location within existing § 550.200, for purposes of the IOP provisions at proposed § 550.204, as discussed next.

When must I submit my IOP for proposed Arctic exploratory drilling operations and what must the IOP include? (§ 550.204)

This proposed rule would require the operator to develop an IOP for each proposed exploratory drilling program on the Arctic OCS, and to submit the IOP to DOI, through its designee, BOEM, at least 90 days in advance of filing its EP. The IOP would need to describe how the proposed exploratory drilling program would be designed and conducted in an integrated manner suitable for Arctic OCS Conditions and would address each of the information requirements identified in proposed § 550.204. Operators may also choose to address the requirements in §§ 550.211 through 550.228, which could facilitate the later formal review of the operator's EP. The IOP should be detailed enough to allow DOI, other relevant Federal agencies, and the State of Alaska to:

1. Familiarize themselves with the proposed operations as an integrated project from start to finish; and
2. Provide constructive feedback to the operator concerning the conceptual plans reflected in its IOP.

DOI recognizes that when the IOP is submitted, operators might not possess all the detailed and specific information that may be more readily available later



in the planning process; *e.g.*, contracts for vessels may not be finalized, precise dates of drilling may be uncertain, or the exact staging location of assets, such as the relief rig or SCCE, may be unknown. For BOEM's and BSEE's purposes, operators would submit more detailed information through the EPs and APDs, as appropriate.

Though BOEM would review the IOP to ensure that the operator's submission addresses each of the elements listed in § 550.204, the IOP would not require approval by DOI or the other relevant agencies. Instead, the IOP would be an informational document intended to facilitate early review of important concepts related to an operator's proposed exploratory drilling program. This review would assist DOI and other relevant agencies in developing an understanding of, and familiarity with, the operator's overall proposed exploratory drilling program early in the planning process.

DOI recognizes that the information requirements of § 550.204 could implicate other Federal agencies' and the State of Alaska's statutory and regulatory mandates. For example, the USCG administers laws and regulations governing maritime safety, security, and environmental protection and is also responsible for inspecting the vessels to which those laws and regulations apply. In acknowledging the USCG's principal jurisdiction over vessel safety and security, DOI has determined that information, early in the process, pertaining to the safety of operations, vessel mobilization, demobilization, and tow plans, is also essential to DOI's statutory and regulatory responsibilities related to Arctic OCS oil and gas activities. The IOP process is intended to facilitate the sharing of information among the relevant Federal agencies and the State of Alaska and to provide the relevant agencies an early opportunity to engage in a meaningful and constructive dialogue with operators, consistent with the policies articulated in E.O. 13580 (Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska, discussed earlier).

Upon receipt, DOI would engage fellow members of the Working Group and distribute the IOP to other Federal government agencies involved in the review, approval, or oversight of aspects of OCS operations (*e.g.*, BOEM, BSEE, USFWS, USCG, NOAA, and EPA), as well as the State of Alaska. Early engagement by these entities would allow them to become familiar with the operator's overall proposed exploratory drilling program and could provide a meaningful opportunity to offer early

feedback to the operator concerning its proposed activities and any identifiable issues that might affect future permitting decisions. DOI would also encourage the assembly of an interagency coordination team to facilitate and coordinate agency review and feedback. Any feedback could be provided individually by the relevant Federal agencies or the State of Alaska, or collectively through DOI.

BOEM also plans to promptly post each IOP on its Web site. BOEM would not solicit public input on the IOP; instead, the IOP would be informational only, affording the public an early opportunity to view key concepts of a proposed exploratory program. This effort responds to stakeholder concerns that BOEM does not provide the public with sufficient time to participate meaningfully in BOEM's administrative process for proposed exploratory drilling activities on the Arctic OCS. Typically, the public first becomes aware of an operator's plans for exploratory drilling when the operator submits its EP. BOEM acknowledges that public review periods for EPs are relatively short in duration. However, this is a result of the OCSLA provision that requires BOEM to approve, disapprove, or require modifications to an EP within 30 days of BOEM deeming the EP submitted (43 U.S.C. 1340(c)(1)), thus placing modification of the length of the review period outside the discretion or authority of the agency absent Congressional action. An early opportunity to view the IOP and the key concepts of the proposed exploratory drilling program, however, will enhance existing public engagement opportunities.

#### Paragraph (a), Vessels and Equipment

Operators must plan to adapt their exploratory drilling operations to Arctic OCS Conditions. Although generally the equipment for extracting oil and gas from the OCS is the same for the offshore Arctic as anywhere else on the OCS, the equipment might need to be modified, procedures might need to be adjusted, or personnel might need to be specifically trained for work conditions on the Arctic OCS. For example, cranes might need to be modified for operations under ice loading that could be anticipated during Arctic OCS operations, and be de-rated to account for reduced strength in extreme cold temperatures. Accordingly, this provision would require that operators submit, "[i]nformation describing how all vessels and equipment will be designed, built, and/or modified to account for Arctic OCS Conditions" and is designed to ensure that the operator

is planning to deploy vessels and equipment capable of operating safely on the Arctic OCS. Operators would need to submit information sufficient to allow DOI and other relevant agencies (*e.g.*, the USCG) to understand the function of each vessel within the proposed fleet of vessels and how the vessels would be capable of performing their identified roles in the proposed exploratory drilling program safely and effectively.

#### Paragraph (b), Exploratory Drilling Program Schedule

The proposed rule would require the IOP to include an exploratory drilling program schedule of operations including importantly, contractor work on critical components of the program (*e.g.*, inspection and testing of critical equipment such as BOPs or SCCE). Thorough advanced planning regarding the proposed schedule for operations is an important component of the IOP, particularly in light of the limits that returning sea ice can place on the drilling season on the Arctic OCS, and for elements of operations for which operators are relying upon outside contractor deliverables. Furthermore, it is important for BOEM and other relevant agencies to have information regarding how the timing of proposed operations aligns with expected seasonal ice encroachment, as well as how the timing of proposed operations may interact with seasonal marine mammal migrations and subsistence activities, for purposes of understanding the potential environmental impacts. This will help BOEM and other relevant agencies develop an understanding of how the operator proposes to conduct operations safely.

The proposed schedule would need to include, for example, when an operator intends to enter waters overlying the Alaska OCS (including transit time to the proposed drilling site), when drilling is expected to commence and conclude, dates of operations, and when the operator plans to leave the vicinity of drilling operations. The schedule would also need to include the critical dates for completion or activation of components under construction, repair, or storage by outside contractors. This provision would help assure DOI and other relevant agencies that the operator and its contractors have developed a reasonable schedule for executing each phase of the exploration program and are capable of conducting exploratory drilling activities safely in Arctic OCS Conditions.

#### Paragraph (c), Mobilization and Demobilization

This provision would require operators to include in their IOP a description of their mobilization and demobilization operations, including tow plans suitable for Arctic OCS Conditions, as well as their general maintenance schedules for vessels and equipment. This element is designed to help DOI and other relevant agencies understand the extent to which operators:

1. Have accounted for the conditions likely to be encountered on the Arctic OCS; and
2. Are prepared to handle the substantial environmental challenges and associated operational risks present throughout the mobilization and demobilization of personnel and equipment.

The requested information would facilitate coordination between DOI and the USCG. Similarly, having information about where vessels would come from and go to before and after entering the waters overlying the Alaska OCS would aid, for example, DOI's and other relevant agencies' early understanding of potential environmental issues, such as aquatic invasive species that might be carried on vessels.

This provision would also require consideration of how repairs to, and maintenance of, vessels and equipment might affect the larger exploratory drilling program. This information could facilitate DOI's and other relevant agencies' understanding of potential environmental considerations and safety aspects of the projected operational schedules.

#### Paragraph (d), Exploratory Drilling Program Objectives, Timelines, and Contingency Plans

This provision would require operators to include in their IOP a description of their "exploratory drilling program objectives and timelines for each objective, including general plans for abandonment of the well(s)" under a variety of circumstances. This description would help DOI and other relevant agencies familiarize themselves with the operator's plans for a well-designed, safe operation with clear objectives for employees and contractors that would allow ample flexibility in light of the difficult and variable conditions on the Arctic OCS.

A fully developed exploration program includes, among other things: the operator's general plan of how many wells it plans to drill in a particular season; the timing and sequence of

those operations; locations of the wells; necessary equipment and resources, including information on support vessels; and the operator's contingency plans in the event that temporary abandonment would become necessary. To the extent that relevant information submitted with the IOP has not changed, the operator could later incorporate that information into its EP. Thorough advanced planning of the operator's objectives, as well as clear timelines for the accomplishment of each objective, are essential, particularly in light of the limited seasonal drilling window on the Arctic OCS.

Given the uncertainties created by the challenging Arctic OCS Conditions, it is equally essential for an operator to acknowledge and plan for contingencies and delays that might arise. For example, an operator would need to provide general information regarding how it would safely respond to unanticipated ice encroachment at the drill site, including safe and secure temporary abandonment of the well and relocation of the drilling rig, as necessary. DOI would need to be provided with information that explains how the operator has considered these elements of its exploration program, well in advance of operations. Also, if an operator plans to drill multiple wells, DOI must be provided with information regarding the anticipated objectives and timelines for each well. Similarly, an operator would be expected to indicate whether it intends to abandon the well(s) at the end of the season and, if the operator intends to abandon the well, whether such abandonment would be temporary or permanent.

#### Paragraph (e), Weather and Ice Forecasting and Management

One of the key drivers of this proposed rule is DOI's need to understand how operators would account for the variable conditions on the Arctic OCS and how those conditions might affect drilling activities. One important component of an operator's overall program is accounting for adverse weather and ice conditions and developing a plan to respond to those conditions. Consequently, this provision would require operators to describe their weather and ice forecasting capabilities for all phases of the exploration program, including a description of how they would respond to and manage ice hazards and weather events. The challenges presented by Arctic OCS Conditions are not limited to the period of active drilling operations, but would create difficulties throughout all phases of an exploratory drilling program,

including mobilization and demobilization. Accordingly, it is important for DOI and other relevant agencies to understand the operator's plans for implementing ice and weather forecasting and management systems that would be operational around the clock from start to finish.

#### Paragraph (f), Contractors

This provision would require operators to provide in their IOP a description of work to be performed by contractors supporting their exploratory drilling program (including mobilization and demobilization), how such work would be designed or modified to account for Arctic OCS Conditions, and operators' strategy for contractor management, oversight, and risk management. This information is designed to help DOI and other relevant agencies understand the operator's strategies for developing, early in the planning process, a rigorous and effective operational management and oversight system for its contractors that is specifically tailored for operations on the Arctic OCS. Information regarding the nature and timeline of operational elements for which the operator would rely on contractors would aid in a full understanding of the various inputs and contingencies that might affect the planned execution of the proposed operations.

The IOP would need to describe, for example, what types of operations the operator would contract out and how the operator would oversee the contractor to ensure the contractor's work product would be suitable for Arctic OCS operations. At the IOP stage, the specific names of contractors would not be necessary but could be provided, if known. The focus of this proposed requirement is to facilitate DOI's and other relevant agencies' understanding of how the operator plans to rely on contractors and how it plans to manage its contractor relationships in order to ensure safe and responsible drilling operations.

#### Paragraph (g), Safety

BOEM proposes to require that operators include in their IOP a description of how they "will ensure operational safety while working in Arctic OCS Conditions," including but not limited to, the safety principles applicable to operators and their contractors, the accountability structure within operators' organizations for implementing these principles, how operators would communicate these principles to their employees and contractors, and how operators would

determine successful implementation of these principles.

The OCSLA provides that all operations taking place on the OCS “should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health” (43 U.S.C. 1332(6)). Also, operators are required to demonstrate through their EPs and APDs that they have planned and are prepared to conduct activities in a manner that conforms to the OCSLA and applicable implementing regulations, and that their activities will be conducted safely (*see* 43 U.S.C. 1340(c)(1); 30 CFR 250.106, 250.107, 550.202 paragraphs (a) and (b)). The proposed safety information requirement would help DOI and other relevant agencies (*e.g.*, USCG) familiarize themselves with the operator’s early consideration of how its proposed exploratory drilling program would proceed in a safe manner with appropriate caution and respect for the extreme and unpredictable conditions found offshore in the Arctic and would be consistent with DOI’s and other relevant agencies’ safety requirements.

This proposed safety information element is also intended to complement BSEE’s SEMS program by requiring operators to identify and assess, early in the planning stages of their proposed exploratory drilling program, their guiding principles for safe Arctic OCS operations, and optimal strategies for implementing those principles throughout their workforce.

Proposed 30 CFR 550.204(g) would not require an operator to provide the same level of detail, if not available, concerning safety of operations as would be available at the time of the EP and APD, or to duplicate the detail provided in its USCG Safety Management System program or its BSEE SEMS program. Instead, the IOP would need to provide a general understanding of the principles that operators would follow to manage risks to ensure safety of all exploratory drilling activities and personnel vis-à-vis the conditions likely to be encountered on the Arctic OCS. For example, it is reasonably expected that operators would experience freezing spray, extended periods of low light, strong winds, and dense fog during operations. Operators would need to provide a general description of how

they would account for these conditions, and any guiding principles they would follow to minimize risk to operations, personnel, vessels, and other equipment.

#### Paragraph (h), Staging of Oil Spill Response Assets

BOEM proposes to require that operators include in their IOP information regarding their “preparations and plans for staging of oil spill response assets.” This provision would facilitate DOI’s, and other relevant agencies’ (*e.g.*, USCG), early understanding of the potential effects on local communities from staging spill response assets near coastal communities, the safety and environmental implications of plans for mobilization and demobilization of related vessels and equipment, the potential environmental impacts of the vessels staged in the area for response, and anticipated response times based on where the equipment will be located. This information would be especially relevant to the USCG, which is the Federal On Scene Coordinator responsible for developing the North Slope Sub-Area Contingency Plan for Oil and Hazardous Substances Discharges/Releases. The USCG and all appropriate governmental entities at the State and local levels would have an early understanding of the proposed activities.

#### Paragraph (i), Impact of Exploratory Drilling on Local Community Infrastructure

BOEM proposes to require that operators include in their IOP, a description of their “efforts to minimize impacts of [their] exploratory drilling operations on local community infrastructure, including but not limited to housing, energy supplies, and services.” This provision would facilitate DOI’s and other relevant agencies’ early understanding of the potential socioeconomic implications of the proposed exploratory drilling program, including the extent to which the proposed activities might strain the limited infrastructure of coastal communities in the Arctic, or reduce the availability of housing, energy, food, and health care to local communities through increased demand and higher costs caused by the presence of persons supporting the exploratory drilling program.

#### Paragraph (j), Local Community Workforce and Response Capacity

BOEM proposes to require that operators include in their IOP “[a] description of whether and to what

extent your project will rely on local community workforce and spill cleanup response capacity.” This provision would encourage operators to engage in early planning toward providing local communities, which would incur the greatest risk of offshore exploration activities, with the capacity—both in terms of training and resources—to protect their communities and important subsistence use areas. It is intended to provide DOI and other relevant agencies with early insight into whether the proposed operations are being planned safely, with appropriate environmental safeguards and respect for the other users of area resources. This provision would also allow DOI to develop an early understanding of industry’s efforts to promote local communities’ ability to participate in and obtain benefit from future Arctic OCS oil and gas development.

How do I submit the IOP, EP, DPP, or DOCD? (§ 550.206)

DOI recognizes that operators may consider some of the information required by proposed § 550.204 to be proprietary or commercial in nature. Pursuant to the proposed revisions to § 550.206, operators would be able to request the nondisclosure of this information using established DOI processes. As is currently the case with EPs, Development and Production Plans (DPPs), and Development Operations Coordination Documents (DOCDs), operators requesting the nondisclosure of portions of an IOP should provide BOEM with two separate versions of the IOP; a public version from which potentially exempt information is redacted, and a BOEM version with such information present, but clearly marked as proprietary.

If I propose activities in the Alaska OCS Region, what planning information must accompany the EP? (§ 550.220)

As described previously, drilling operations, especially on the Arctic OCS, can be complex, and operators may face substantial environmental challenges and operational risks throughout every phase of the endeavor. One of the main goals of this rulemaking is to ensure, through thorough advanced planning, that operators are capable of operating safely in the extreme and challenging Arctic OCS Conditions.

BOEM first proposes to amend the existing “Emergency Plans” provision at § 550.220(a) to add fire, explosion, and personnel evacuation to the events for which emergency plans are required, and to replace the terms “blowout” with “loss of well control” and “craft” with

“vessel, offshore vehicle, or aircraft” for clarification purposes.

BOEM next proposes to create a new § 550.220(c), which would set forth additional information requirements for EPs that are proposing exploration activities on the Arctic OCS. BOEM proposes to add a new performance-based provision at § 550.220(c)(1) that would require an operator to describe how its proposed activities would be designed and conducted in a manner suitable for Arctic OCS Conditions and how these activities would be managed and overseen as an integrated endeavor. This description may be summarized from the operator’s IOP or, if appropriate, updated with any information not available at the time of the IOP.

BOEM also proposes to add § 550.220(c)(2), which would require operators to include, as part of their EP submissions, more detailed and updated information concerning their weather and ice forecasting and management plans for all phases of their exploratory drilling activities, including: a description of how they would respond to and manage ice hazards and weather events; their ice and weather alert procedures; their procedures and thresholds for activating their ice and weather management systems; and confirmation that their ice and weather management and alert systems would be operated continuously throughout the planned operations. As described previously, DOI needs to be certain that adequate forecasting equipment and procedures are in place to predict and follow developing weather and ice conditions that might pose a risk to operations. Also, it is essential that operators develop and describe their pre-established thresholds for triggering varying levels of responsive actions in the face of weather and ice threats, as well as the procedures and equipment necessary to respond to these hazards. Furthermore, operators need to demonstrate that they would be capable of responding to and managing these conditions to prevent or minimize the risks associated with ice and adverse weather.

BOEM next proposes to require preliminary information concerning SCCE capabilities, deployment of a relief well rig, and sharing of SCCE and spill response and cleanup assets. The proposed informational requirements concerning SCCE and relief well rigs relate to the operator’s preliminary plans for complying with BSEE’s proposed regulations at 30 CFR 250.471 and 250.472, which will be described later.

Requiring information about how an operator intends to satisfy the proposed BSEE regulations at proposed 30 CFR 250.471 and 250.472 would allow consideration of these issues at an early planning stage, and would further inform BOEM’s review of proposed EPs under § 550.202, and other applicable laws. It would likewise reduce the risk of discrepancy between reviews and approvals conducted at the EP stage and an operator’s later-submitted APD. While BOEM anticipates that elements of the SCCE description required by proposed § 550.220(c)(3) and the relief well rig description required by proposed § 550.220(c)(4) may be general at the EP stage, they must be detailed enough for BOEM to confirm that the operator would have plans in place for how it would conduct its operations safely, in conformance with applicable regulations. The description would also need to be detailed enough to enable BOEM to evaluate the potential environmental implications of proposed SCCE and relief well rig staging and operations. Proposed § 550.220(c)(4) would set forth some of the information expected to be available about the relief well rig when the EP is submitted.

The proposed § 550.220(c)(5) provision would add an informational requirement concerning any agreements the operator might have with third parties for the sharing of assets (*e.g.*, SCCE, relief rigs, and oil spill response resources) and/or any agreements to assist each other in response and cleanup efforts in the event of a loss of well control or other emergency. A cooperative, consortium-based model should offer:

1. Logistical, operational, and commercial efficiencies;
2. Less duplication of personnel and equipment;
3. Reduced monetary cost of exploration;
4. Reduced environmental footprint;
5. Reduced social costs and interference with other users of the OCS; and
6. A coordinated response and cleanup effort in the event of a loss of well control.

BOEM’s environmental impact analyses have repeatedly shown that the presence of vessels, aircraft, and other equipment within the Arctic region could result in adverse impacts to subsistence activities and to environmental resources (*e.g.*, noise impacts on marine mammals, increased risk of bird or marine mammal collisions, increased risk of fuel spills, and increased air emissions). The potential effects would be compounded if multiple operators—each fielding its

own fleet of drilling, resupply, and emergency response vessels—were to engage in activities simultaneously. Avoiding duplication of relief well rigs, oil spill response assets, and other emergency response vessels and equipment would be an effective means to minimize environmental and social impacts.

BOEM and BSEE strongly encourage operators proposing exploratory drilling activities on the Arctic OCS to enter into mutual aid agreements for the sharing of vessels, relief well rigs, and other assets or services associated with responding to an oil spill or other emergency. Notice of these arrangements would inform BOEM’s and BSEE’s safety and environmental review of proposed activities to ensure operators are fully prepared to respond to a loss of well control. Also, BOEM and BSEE expect that operators, when planning a response to a loss of well control, would ensure that an effective and immediate removal, mitigation, or prevention of a discharge could be achieved, to the greatest extent practicable, using private sector capability.

Finally, proposed § 550.220(c)(6) would add an informational requirement concerning the conclusion of on-site operations at the end of the season. An operator would include a projected date, and information used to determine the date, when on-site operations would be completed based on ice conditions that will likely exist in the relevant operational area (using current Federal ice and weather forecasts or other reliable forecasting systems). An operator would also provide a projected date, and supporting information, on when the operator would stop drilling operations into zones capable of flowing liquid hydrocarbons to the surface. That date would need to be consistent with the relief rig planning requirements under proposed 30 CFR 250.472 and with the estimated timeframe for deployment of a relief rig under proposed § 550.220(c)(4).

There is no single, definitive “end of drilling season” in the Arctic OCS. The projected end-of-season dates in any specific EP should be based on a variety of factors, including the operator’s equipment, procedures, and capability to effectively manage and mitigate risk that are reasonably likely to occur. Other factors include, but are not limited to, the prevailing meteorologic and oceanic conditions, which vary from year to year, and the location of proposed drilling. For example, in a year when the encroachment of sea ice is projected to occur later, an operator may be able to justify a later end of

season and avoid the need to cease drilling operations earlier than necessary. By contrast, in a year when the onset of sea ice is projected to occur earlier, the operator would need to plan to conclude on-site operations earlier.

In projecting when to conclude on-site operations, BOEM and BSEE expect operators to be flexible and fully responsive to the latest ice and weather forecasts and the best available information for ensuring optimal timing for the end of on-site operations. Of course, after an EP is approved, an operator may request approval to revise its EP if available information regarding its operations and anticipated meteorologic and oceanic conditions change.

For example, BOEM's approval for Shell's 2012 Arctic operations required drilling operations in zones where measurable quantities of liquid hydrocarbons were capable of flowing into the well to be concluded 38 days prior to November 1, based on satellite imagery showing the five-year historical average of earliest sea ice encroachment over Shell's drill site and estimates of the time needed to drill a relief well. The purpose of this drilling hiatus was to reduce project risk by assuring a greater opportunity for response and cleanup in the unlikely event of a late season oil spill.

BOEM and BSEE invite comments on what kinds of Arctic weather and ice forecasting options are currently (or expected to be) available for use by operators. In addition, comments may address other factors that should be considered in determining when on-site operations are expected to be completed, or when drilling into certain hydrocarbon zones should cease each year, given an operator's response and cleanup capabilities.

### C. Additional Regulations Proposed by BSEE

#### Authority

The authority citation for 30 CFR part 250 would be amended to add reference to 33 U.S.C. 1321(j)(1)(C). This statutory provision, in addition to section 5 of the OCSLA (43 U.S.C. 1334), provides authority to DOI for the portions of the proposed revisions to § 250.300 related to preventing discharge of petroleum-based mud and cuttings from operations that use petroleum-based mud. For further explanation of those provisions, see the discussion under that section.

#### Definitions (§ 250.105)

This section would be revised to add definitions for *Arctic OCS*, *Arctic OCS Conditions*, *Cap and Flow System*,

*Capping Stack*, *Containment Dome*, and *Source Control and Containment Equipment*. For an explanation of the definitions of *Arctic OCS* and *Arctic OCS Conditions*, see the discussion of definitions at the beginning of the Section-by-Section analysis. The remaining definitions are necessary because these proposed regulations would require the defined systems and equipment under identified circumstances. In addition, the definition of *District Manager* would be revised for activities on the Alaska OCS such that District Manager would mean Regional Supervisor, because the Regional Supervisor in BSEE's Alaska OCS region performs the District Manager's duties.

*Cap and Flow System*—this term would be defined to mean an integrated suite of equipment and vessels, including a capping stack and associated flow lines, that, when installed or positioned, is used to control the flow of fluids escaping from the well by conveying the fluids to the surface to a vessel or facility equipped to process the flow of oil, gas, and water. A cap and flow system is a high pressure system that includes the capping stack and piping necessary to convey the flowing fluids through the choke manifold to the surface equipment. When a responsible party has been able to successfully cap a well, but conditions will not allow the well to be shut in (e.g., due to damage, equipment failure or pressure constraints), the cap and flow system allows the well cap to be used as a connection for the flow lines that transport well fluids to the surface for capture and disposition. In some circumstances, this can relieve the pressure on the capping device or tubulars at the well head or in the well while maintaining or reestablishing control of the produced fluids, or a portion thereof.

*Capping Stack*—this term would be defined to mean a mechanical device that can be installed on top of a subsea or surface wellhead or BOP to stop the flow of fluids into the environment. A capping stack's primary function is to stop the uncontrolled flow of fluids from a well to the environment in the event that other intervention methods, such as a BOP, would fail. The capping stack is attached to a connector or pipe stub located on or in the well to achieve a pressure-tight seal that would either stop the flow or direct it into a conduit that would transmit the fluids to a surface facility that is able to store, process, or properly dispose of the fluids. Capping stacks may be deployed from the surface to the well head, as

needed, or prepositioned below the riser system when the BOP is located on the deck of a MODU. The pre-positioned capping stack may be created by adapting an auxiliary subsea intervention device to meet the requirements of this proposed rule.

*Containment Dome*—this term would be defined to mean a non-pressurized container that can be used to collect fluids escaping from the well or equipment below the sea surface or from seeps by suspending the device over the discharge or seep location. A containment dome, also known as a "sombbrero," "cofferdam," or "hat," captures fluids after they have escaped the well, subsea equipment, or a seep, but before they have reached the surface. It consists of a structure that has the ability to capture fluids rising through the water column and to convey the fluids to a surface vessel or facility for processing or disposal. If a cap and flow system is unable to stop or control the flow of fluids to the environment, or the well system is so damaged that a capping stack cannot make a successful connection, the containment dome system would be needed to capture the hydrocarbons flowing to the environment.

*Source Control and Containment Equipment (SCCE)*—SCCE would be defined to mean the capping stack, cap and flow system, containment dome, and/or other subsea and surface devices, equipment, and vessels whose collective purpose is to control a spill source and stop the flow of fluids into the environment or to contain fluids being discharged into the environment for proper processing or disposal. This definition is useful for referring collectively to the various independent elements of an operator's SCCE in portions of the proposed rule that would apply to any such equipment and its capabilities as a unified system, rather than a specific type of SCCE (see, e.g., proposed § 250.470(f)). The SCCE serves the purpose of stopping or minimizing the flow of hydrocarbons into the environment after a loss of well control event has occurred. The term "surface devices" within the definition of SCCE refers to equipment mounted or staged on a barge, vessel, or facility. The purpose of this equipment is to separate, treat, store and/or dispose of fluids conveyed to the surface by the cap and flow system or the containment dome. The SCCE, however, does not include a BOP or similar equipment that is used in ordinary operations and functions to maintain well control under normal operational conditions or to prevent a loss of well control. Finally, "subsea devices" includes, but is not limited to,

remotely operated vehicles (ROV), anchors, buoyancy equipment, connectors, cameras, controls and other subsea equipment necessary to facilitate the deployment, operation and retrieval of the SCCE.

What incidents must I report to BSEE and when must I report them? (§ 250.188)

The current regulation requires operators to provide oral and written notification to the BSEE District Manager (who in the Alaska OCS region is the Regional Supervisor) of, among other things, any injuries, fatalities, losses of well control, fires and explosions, and incidents affecting operations. BSEE proposes to add a new paragraph (c) to this section that would require operators on the Arctic OCS to provide an immediate oral report to the BSEE onsite inspector, if one is present, or to the Regional Supervisor of any sea ice movement or condition that has the potential to affect operations or trigger ice management activities, as well as the start and termination of these activities, and any “kicks” or operational issues that are unexpected and could result in the loss of well control.

Sea ice, if not properly managed, can have a major effect on exploratory drilling operations. Spring and summer thawing can produce large ice masses on the waters overlying the Arctic OCS, which could cause substantial damage to exploratory drilling equipment and render operations unsafe, leading to injury, loss of life, or environmental harm. For example, if the well is not properly protected, sea ice that is moving through the surrounding water could cause a loss of well control by damaging the well head and triggering the discharge of hydrocarbons into the marine environment. Ice management activities, as described in an operator’s ice management plan, could include physically changing the direction of an ice floe or using ice breaking techniques in order to minimize the likelihood of damage to the exploratory drilling equipment.

It is essential for operators to remain in close communication with BSEE about sea ice in the area that has the potential to affect operations. Just as the operator needs to have sufficient time to act in the event that ice poses an operational hazard, BSEE would need sufficient time to oversee the safety of an operator’s reactions and prepare to respond if a response is necessary due to a safety or environmental incident resulting from an ice event.

The proposed paragraph (c) would require the operator to immediately notify the BSEE inspector on location or

the Regional Supervisor of any event that, pursuant to the hazard thresholds identified in its EP, would trigger a heightened observation requirement, or could potentially result in the need to physically manage ice, initiate operations to secure the well, or move the drilling rig to avoid a threat caused by floating ice. This provision would also require immediate oral notification of the commencement and completion of any ice management activities.

The oral report required by this provision could be a simple direct oral notification of the basic facts surrounding the relevant circumstances, and would not need to contain all of the detail required of oral reports pursuant to § 250.189. The proposed provision would also require a follow-up written report regarding any ice management activities undertaken by the operator that must be submitted within 24 hours following completion of those activities.

BSEE proposes this tighter 24-hour timeline (as opposed to, and in lieu of, the standard 15 day window under § 250.190) due to the immediacy of the threats and concerns presented by circumstances requiring ice management activities, and the need for BSEE to remain abreast of those events in its regulatory and safety oversight role. The written report may be submitted via email or other electronic means to the inspector or Regional Supervisor and must conform to the content requirements set forth in § 250.190.

Finally, BSEE proposes to require that operators submit an immediate oral report of any “kicks” or operational issues that are unexpected and could result in the loss of well control. Operators on the Alaska OCS currently have to report kicks at the end of every day on the well activity report Form BSEE-0133, as required by § 250.468. However, the proposed requirements of this section mean operators would not be allowed to wait until the end of the day or some time later to fill out a form. If a kick occurred, they would have to provide an immediate oral report. The nature of Arctic OCS Conditions, as defined in this proposed rule, demonstrates that responding to a spill in the Arctic region would be a difficult task. Reporting kicks right away is a safety measure that can improve the ability of both inspectors and operators to potentially prevent a loss of well control.

Documents incorporated by reference. (§ 250.198)

The proposed rule would add subsection (h)(89) to existing § 250.198 as a reference to the American

Petroleum Institute (API) proposed draft Recommended Practice (RP) 2N, *Recommended Practice for Planning, Designing, and Constructing Structures and Pipelines for Arctic Conditions*, Third Edition. This document will be a voluntary consensus standard addressing the unique Arctic OCS Conditions that affect the planning, design, and construction of systems used in Arctic and sub-Arctic environments. This API document—which is virtually identical to a standard previously issued by the International Organization for Standardization (ISO), “Petroleum and Natural Gas Industries Arctic Offshore Structures,” First Edition (2010) (ISO 19906)—would be appropriate for certain aspects of drilling operations, such as accounting for the severe weather and thermal effects on structures, maintenance procedures, and safety. Since this proposed rule is focused on the exploratory drilling phase of operations on the Arctic OCS, certain portions of API RP 2N, Third Edition (such as those related to issues regarding structural and pipeline integrity) would not be relevant to the exploration stage. However, many elements of that document, when published, could be effectively applied to equipment used in exploratory drilling operations on the Arctic OCS. Therefore, proposed §§ 250.198(h)(89) and 250.470(g) would incorporate appropriate elements of API RP 2N, Third Edition, for purposes of APD information requirements.

A voluntary consensus standard indicates acceptance and recognition across the industry that certain technology is feasible. For example, API standards are created with input from oil and gas operators, drilling contractors, service companies, consultants, and regulators. Even though the development of a consensus standard does not necessarily represent a unanimous agreement by the developing body’s members, the API process provides a means for industry and regulatory bodies to provide input into the development of protocols for the highly specialized equipment and procedures used in oil and gas operations. In the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113, 15 U.S.C. 3701 note), Congress directed Federal agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies in lieu of government-unique standards, unless inconsistent with applicable law or otherwise impractical (*see* OMB Circular A–119 (Revised), February

1998, available at [www.standards.gov/standards\\_gov/ntta.cfm](http://www.standards.gov/standards_gov/ntta.cfm).

BSEE frequently uses standards (e.g., codes, specifications, RPs) developed through a consensus process, facilitated by standards development organizations and with input from the oil and gas industry, as a means of establishing requirements for activities on the OCS. BSEE may incorporate these standards into its final regulations without publishing the standards in their entirety in the Code of Federal Regulations, a practice known as incorporation by reference. The legal effect of incorporation by reference is that the incorporated standards become regulatory requirements. Material incorporated in a final rule, like any other properly issued regulation, has the force and effect of law, and BSEE holds operators, lessees and other regulated parties accountable for complying with the documents incorporated by reference in its final regulations. BSEE currently incorporates by reference over 100 consensus standards in its offshore regulations governing oil and gas operations (see 30 CFR 250.198).

Federal regulations at 1 CFR part 51 govern how BSEE and other Federal agencies incorporate various documents by reference. Agencies may only incorporate a document by reference in a final rule by publishing the document title, edition, date, author, publisher, identification number and other specified information in the **Federal Register**. The Director of the Federal Register must approve each publication incorporated by reference in a final rule. Incorporation by reference of a document or publication in a final rule is limited to the specific edition approved by the Director of the Federal Register.

#### Availability of Incorporated Documents for Public Viewing

When a copyrighted industry standard is incorporated by reference into our regulations, BSEE is obligated to observe and protect that copyright. We typically provide members of the public with Web site addresses where these standards may be accessed for viewing—sometimes for free and sometimes for a fee. The decision to charge a fee is made by each standards development organization. The API provides free online public access to at least 160 key industry standards, including a broad range of technical standards. Those standards represent almost one-third of all API standards and include all that are safety-related or are incorporated into Federal regulations. These standards are available for review, and hard copies

and printable versions will continue to be available for purchase through API. BSEE proposes to incorporate, with certain exclusions discussed later in this proposed rule, draft proposed API RP 2N, Third Edition, which is available for free public viewing during the API balloting process on API's Web site at <http://mycommittees.api.org/standards/ecs/sc2/default.aspx> (click on the title of the document to open). When finalized by API, that standard will be available for free public viewing on API's Web site at: <http://publications.api.org>.<sup>5</sup>

In addition, as explained later in this proposed rule, BSEE is considering incorporating by reference ISO 19906 in lieu of API RP 2N, Third Edition. ISO standards are available for purchase from ISO at ISO's publications Web site at: [http://www.iso.org/iso/home/store/catalogue\\_ics.htm](http://www.iso.org/iso/home/store/catalogue_ics.htm) or from commercial vendors.<sup>6</sup>

For the convenience of the viewing public who may not wish to purchase or view incorporated documents online, they may be inspected, upon request, at our office, 381 Elden Street, Room 3313, Herndon, Virginia 20170 (phone: 703-787-1587); or at the National Archives and Records Administration (NARA). For information on the availability of materials at NARA, call 202-741-6030, or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

If API RP 2N, Third Edition, is incorporated into the final rule, it would continue to be made available for public viewing, when requested, at the addresses indicated in the prior paragraph. Specific information on where incorporated documents can be inspected or obtained is also found at § 250.198, *Documents incorporated by reference*.

#### Pollution prevention. (§ 250.300)

This section would revise BSEE's pollution prevention regulation as it pertains to Arctic OCS exploratory drilling operations. Spent mud and cuttings are generated during exploratory drilling. Drilling mud may be entirely water-based or may include

<sup>5</sup> To access a standard at that API Web site, first log-in or create a new account, accept API's "Terms and Conditions," then click on the "Browse Documents" button, and then select the applicable category (e.g., "Exploration and Production") for the particular standard(s) you wish to review.

<sup>6</sup> Copies of the ISO standards referred to in this proposed rule may also be viewed, upon request, at BSEE's Regional Offices for Alaska (3801 Centerpoint Dr., Suite 500, Anchorage, AK; 907-334-5300), the Pacific (760 Paseo Camarillo, Camarillo, CA; 805-384-6300), and the Gulf of Mexico (1201 Elmwood Park Blvd., Nw Orleans, LA; 1-800-672-2627) and at BSEE's Houston office (701 San Jacinto St., Rm. 115, Houston, TX; 713-220-9201).

petroleum (i.e., oil) as a component. Cuttings generated using petroleum-based mud would be oil-contaminated, and the discharge of the mud or cuttings into the environment would result in discharge of that oil into the environment. The proposed rule would add provisions in paragraphs (b)(1) and (b)(2) requiring that, during exploratory drilling operations on the Arctic OCS, the operator must capture all petroleum-based mud, and associated cuttings from operations that use petroleum-based mud, to prevent their discharge into the marine environment. These subparagraphs would also clarify the Regional Supervisor's discretionary authority to require operators to also capture all water-based mud and associated cuttings from Arctic OCS exploratory drilling operations (after completion of the hole for the conductor casing) to prevent their discharge into the marine environment, based on factors including, but not limited to:

1. The proximity of the exploratory drilling operations to subsistence hunting and fishing locations;
2. The extent to which discharged mud or cuttings may cause marine mammals to alter their migratory patterns in a manner that interferes with subsistence activities; or
3. The extent to which discharged mud or cuttings may adversely affect marine mammals, fish, or their habitat.

BSEE regulates discharges of mud and cuttings from OCS facilities under the OCSLA, which contemplates the imposition of environmental safeguards for oil and gas activities on the OCS and mandates that they be conducted in a manner that prevents or minimizes the likelihood of damage to the environment. The President has also delegated authority to the Secretary (further delegated to BSEE) to regulate discharges of oil under Section 311 of the CWA, 33 U.S.C. 1321, which calls for the issuance of regulations establishing procedures, methods, and equipment to prevent discharges of oil and hazardous substances from offshore facilities, and to contain such discharges. BSEE's pollution prevention regulations are intended to complement requirements imposed by the EPA under the CWA. For example, in November 2012, the EPA issued general National Pollutant Discharge Elimination System (NPDES) permits authorizing certain discharges from oil and gas exploratory facilities to Federal waters in the Beaufort Sea and the Chukchi Sea, including certain discharges of water-based drilling fluids and drill cuttings, subject to effluent limitations and other requirements. Of note, the EPA NPDES permits do not allow the discharge of

oil-based drilling fluids, or the discharge of water-based drilling fluids and drill cuttings during the fall bowhead whale hunt in the Beaufort Sea. BSEE's proposed regulations clarify the Regional Supervisor's authority to impose operational measures that complement EPA's discharge limitations by considering potential impacts to specific components of the Arctic environment, such as subsistence activities, marine resources, and coastal areas.

The discharge of mud and cuttings has the potential to affect marine mammals, fish, and their habitat, as well as subsistence activities present in the Arctic region. As noted earlier, subsistence hunting is central to the food supply and cultural traditions of many Alaska Natives. BSEE proposes to clarify its authority to limit discharges of any mud and cuttings having the potential to adversely impact marine wildlife or to disrupt subsistence hunting activities.

For example, existing environmental analyses show that the release of drill cuttings and drilling mud would result in increased turbidity and concentrations of total suspended solids in the water column, which could displace marine mammals from the drill sites and could adversely affect habitat and prey within and around the drill site (*see* Shell Gulf of Mexico, Inc.'s Revised Chukchi Sea Exploration Plan Burger Prospect Environmental Assessment (2011)). In addition, subsistence hunters, who rely on traditional ecological knowledge, have expressed concern to BOEM and BSEE that whales are capable of detecting the odors from mud and cuttings and will avoid areas where these discharges occur, resulting in similar effects. Hunting farther away from shore to find displaced whales can increase transit time, reduce the likelihood of successful harvests, increase exposure to adverse weather and dangerous sea states, and increase safety concerns for subsistence hunters. Finally, the farther away whales are harvested from a community, the greater the length of towing time necessary to bring the animals back to shore for processing. This increased tow time could negatively affect the viability of the meat and blubber for food because of spoilage.

Marine mammal migrations and subsistence hunting patterns vary greatly in different areas of the Arctic region and at different times of the year. These proposed rules would therefore clarify the Regional Supervisor's discretion to require the capture of water-based mud and cuttings, taking into account location- and season-

specific circumstances (such as subsistence hunting). In addition, other relevant circumstances, such as applicable provisions of a NPDES general permit, can be considered when exercising that discretionary authority. BSEE invites comments on the potential costs to the industry of limiting or prohibiting the discharge of mud and cuttings that otherwise would not be prohibited by the NPDES general permits.

When and how must I secure a well? (§ 250.402)

The current regulation requires, among other things, that operators install a downhole safety device at an appropriate depth whenever there is an interruption in drilling operations. BSEE proposes to add a new paragraph (c)(1), which would require exploratory drilling operators on the Arctic OCS to ensure that any equipment left on, near, or in a temporarily abandoned well that has penetrated below the surface casing be secured in a way that would protect the well head and prevent or minimize the likelihood of the integrity of the well or plugs being compromised. The primary concern this proposed language is designed to address is the possibility that ice floes could sever, dislodge, or drag any exploration-related equipment, obstructions or protrusions left on the well or the adjacent seafloor. The proposed language, however, is drafted to encompass damage from any foreseeable source. The provision in paragraph (c)(1) is designed to be performance-based, would allow operators to devise optimal strategies for identifying and accounting for threats to the integrity of equipment left on the OCS, and would be limited only to exploration wells that have penetrated below the surface casing. However, for exploration wells located in an area subject to ice scour, based on a shallow hazards survey, proposed paragraph (c)(2) would require a mudline cellar or equivalent means of protection. The BSEE Regional Supervisor will evaluate, during the APD process, whether a proposed equivalent approach is sufficiently protective.

There are a number of problems that could occur if operators did not adhere to this proposed requirement. For example, if an ice floe were to contact equipment left on, near, or in a well that had penetrated hydrocarbons, the impact could damage the well and potentially compromise the cement, casing, or safety valves and plugs inside the well and could result in the discharge of hydrocarbons.

What additional information must I submit with my APD? (§ 250.418)

BSEE proposes to add a new paragraph (k) to this section, providing that the information identified in proposed § 250.470 must be submitted with an APD for exploratory drilling on the Arctic OCS. The information required in the proposed section would be necessary to inform BSEE's evaluation of APDs for Arctic OCS exploratory drilling operations (*see* discussion of proposed § 250.470).

When must I pressure test the BOP system? (§ 250.447)

The current regulation requires operators to pressure test a BOP system when it is installed, at specified time intervals, and prior to drilling out each string of casing or a liner. BSEE proposes to revise paragraph (b) of this section to require a BOP pressure test frequency of one test every 7 days for Arctic OCS exploratory drilling operations. However, there is some debate over whether more frequent testing, beyond the 14-day test frequency prescribed by existing regulations, would be necessary or advisable.

The effectiveness of hydrostatic pressure testing of BOPs has been questioned in the past. The industry has argued that increasing the number of pressure tests: (1) may reduce the reliability of the equipment by degrading the sealing capability of the elements within the BOP stack; and (2) does not necessarily demonstrate the future performance of the equipment. Furthermore, the industry has claimed that the requirement for operators to stop drilling operations to perform a pressure test could ultimately increase the likelihood of an incident occurring. Due to these safety and cost concerns, the industry has sought to reduce the current testing frequency for this equipment (*i.e.*, to longer than every 14 days).

Ensuring the proper functioning of a BOP, which is a critical line of defense against loss of well control, is essential to Arctic OCS drilling operations. BSEE is concerned that the integrity of BOPs could be compromised by Arctic conditions; in particular, BSEE is concerned about the possible effects of extreme weather conditions on BOPs maintained on surface vessels or facilities (such as jackup rigs). At this time, pressure tests and functional tests are the primary methods for ensuring the performance of BOPs. A 7-day BOP testing cycle was proposed by Shell in 2012, and ultimately approved by BSEE, and we propose to require a similar



testing frequency for all Arctic OCS exploratory drilling operations. BSEE specifically requests comments on the appropriateness of the proposed 7-day testing frequency to demonstrate the reliability of the equipment under Arctic conditions. BSEE also requests that commenters identify any additional safety issues that might arise from this increased testing and that would be unique to Arctic operations. In addition, BSEE invites comments on all potential drilling impacts related to the proposed 7-day testing frequency.

Note that the only proposed changes to the existing BOP testing regulation are the phrases specific to exploratory drilling on the Arctic OCS. The remaining language is identical to the wording currently at § 250.447(b) and is duplicated in this proposed rule for readability.

What are the real-time monitoring requirements for Arctic OCS exploratory drilling operations? (§ 250.452)

BSEE proposes to add a new performance-based section in Part 250 that would require real-time data gathering on the BOP control system, the fluid handling systems on the rig, and, if a downhole sensing system is installed, the well's downhole conditions during Arctic OCS exploratory drilling operations. In addition, this section would require operators to transmit immediately the data during operations to an onshore location, identified to BSEE prior to well operations, where it must be stored and monitored by personnel who would be capable of interpreting the data and have the authority, in consultation with rig personnel, to initiate any necessary action in response to abnormal events or data. Such personnel must also have the capability for continuous and reliable contact with rig personnel, to ensure the ability to communicate information or instructions between the rig and onshore facility in real-time, while operations are underway.

This section would be added, in part, based on multiple recommendations from various *Deepwater Horizon* investigation reports. Having the real-time, well-related data available to onshore personnel would increase the level of oversight of well conditions during operations. Onshore personnel could review data and help rig personnel conduct operations in a safe manner. Also, onshore personnel would be able to assist the rig crew in identifying and evaluating abnormalities that might arise during operations. This section would also require that the real-time monitoring data be available to BSEE upon request, to enable BSEE to

perform its oversight role and to monitor responses to events as they unfold. Finally, this section would, consistent with §§ 250.466 and 250.467, require that the data gathered be stored at a designated location for recordkeeping purposes after operations have concluded, to enable BSEE to perform audits, investigations, or other types of analyses, as part of its regulatory oversight functions.

The following undesignated centered heading would be inserted above proposed § 250.470:

#### Additional Arctic OCS Requirements

What additional information must I submit with my APD for Arctic OCS exploratory drilling operations? (§ 250.470)

BSEE proposes to add § 250.470, which would require operators to provide Arctic OCS-specific information with their APDs for exploratory drilling. The proposed informational requirements in the new section would be necessary to inform BSEE's evaluation of APDs for Arctic OCS exploratory drilling operations.

#### Paragraph (a), Fitness for Service

This provision would require operators to submit a detailed description of the environmental, meteorologic and oceanic conditions expected at the well site(s); how their equipment, materials, and drilling unit will be prepared for service in the conditions, and how the drilling unit will be in compliance with the requirements of § 250.417. For this proposed requirement, BSEE would expect the operator to identify the specific drilling units proposed for use during its operations, verify that the identified equipment and materials are fit for service, and that the drilling units conform to the fitness for service requirements of § 250.417. It is important that operators provide this level of detail to ensure that the equipment, materials, and drilling units proposed for use in Arctic OCS exploratory drilling are capable of performing their respective tasks under Arctic OCS Conditions.

The information requested by this proposed section for drilling units is not in addition to the requirements of § 250.417, but rather is designed to make clear that, to satisfy the fitness requirements of § 250.417, operators would need to provide details regarding Alaska OCS Conditions. Further, BSEE does not currently have an existing provision for drilling equipment and materials that requires the same level of

detail found in § 250.417 for drilling units.

BSEE's current regulations concerning fitness for other types of equipment and material are more general and performance-based than the requirements proposed in this rule for Arctic OCS operations. Additionally, since SCCE is a new suite of equipment and materials proposed by this rule, there are no existing fitness for service regulations covering these items. Therefore, the information required under proposed paragraph (a) for equipment and materials would be new.

#### Paragraph (b), Well-specific Transition Operations

This provision would require operators to submit "[a] detailed description of all operations necessary in Arctic OCS Conditions to transition the rig from being under way to conducting drilling operations and from ending drilling operations to being under way, as well as any anticipated repair and maintenance plans for the drilling unit and equipment." BSEE does not intend for this provision to require operators to resubmit any information already submitted to BOEM. Rather, BSEE would expect operators to have a fairly detailed plan when they submit their APD, including information such as the identity of equipment and vessels to be used, dates of planned operations, and a description of how the equipment and vessels would be designed for and be capable of performing in Arctic OCS Conditions. For transition operations, BSEE would need details about all of the activities necessary to begin and end drilling operations, and to move from one drilling location to the next. Examples of the types of activities BSEE would expect an operator to describe include, but are not limited to: recovering the subsea equipment, including the marine riser and the lower marine riser package; recovering the BOP; recovering the auxiliary sub-sea controls and template; laying down the drill pipe and securing the drill pipe and marine riser; securing the drilling equipment; transferring the fluids for transport or disposal; securing ancillary equipment like the draw works and lines; refueling or transferring fuel; offloading waste; recovering the ROVs; picking up the oil spill prevention booms and equipment; and offloading the drilling crew.

Finally, BSEE would require information regarding any specific repair and maintenance plans for the drilling unit and equipment associated with commencement or completion of drilling operations. All of the required information would facilitate BSEE's

understanding of an operator's program and ensure that the operator complies with lease stipulations, EP conditions, and other permitting requirements.

#### Paragraph (c), Well-specific Drilling Objectives and Contingency Plans

This provision would require operators to submit "[w]ell-specific drilling objectives, timelines, and updated contingency plans for temporary abandonment of the well." Whereas the corresponding provisions of the proposed IOP and current EP regulations (*e.g.*, § 550.211) relate more broadly to the objectives and timelines of the overall proposed exploratory drilling activities, this provision would require an operator to provide "well-specific" information at the APD stage. This information would include the operator's detailed schedule of the following:

1. When they will spud the particular well (*i.e.*, begin drilling operations at the well site) identified in the APD;
2. How long will it take to drill the well;
3. Anticipated depths and geologic targets, with timelines;
4. When the operator expects to set and cement each string of casing;
5. When and how the operator would log the well;
6. The operator's plans to test the well;
7. When and how the operator would abandon the well, including specifically addressing plans for how to move the rig off location and how the operator would meet the requirements of proposed § 250.402(c);
8. A description of what equipment and vessels would be involved in the process of temporarily abandoning the well due to ice; and
9. An explanation of how these elements would be integrated into the operator's overall program.

Examples of the information the operator would be required to provide include, but are not limited to: the location(s) to which the rig would be moved; the operator's plans for safely securing the well prior to leaving the drill site; how temporary abandonment would affect the operator's seasonal drilling plans, including its remaining schedule of operations at each well; and how crew logistics, such as transportation to and from a drilling rig, would be affected.

It should be noted that the contingency plans proposed in this section of the rule are different from the contingency plans required for "icing or ice-loading" under existing § 250.417(c)(2). That phrase refers to ice build-up on the vessel or equipment

itself, whereas the focus of proposed § 250.470(c) is on ice management, meaning the contingency plans for response to the presence of ice in the water, such as temporary abandonment of a well until the ice in the water passes, or management through some other technique. For oil and gas exploration, ice management is an Arctic OCS-specific issue that does not occur elsewhere on the OCS. However, icing and ice-loading can occur during operations on other parts of the OCS, outside of the Arctic.

#### Paragraph (d), Weather and Ice Forecasting and Management

This performance-based provision would require an operator to submit: a detailed description of its "weather and ice forecasting capability for all phases of the drilling operation, including how [it] will ensure continuous awareness of potential weather and ice hazards at, and during transition between, wells;" its "plans for managing ice hazards and responding to weather events;" and verification that it has the capabilities described in its EP. Verification could be provided, for example, by providing appropriate supporting documents (*e.g.*, contracts) for the forecasting and ice management capabilities.

BSEE needs to know the details for how the operator would implement the policies and/or plans for managing ice and weather events, identified to BOEM, for the drilling operations proposed in the APD. It is anticipated that the operator may not know the specific details about each vessel and piece of equipment that contributes to its weather and ice forecasting and management capabilities when describing those capabilities to BOEM, in connection with the IOP and the EP. Also, more detailed plans for managing ice hazards or weather events may be necessary and appropriate given the timing and location of the specific well at issue than may have been available or appropriate for the IOP and EP. Further, BSEE anticipates that weather and ice monitoring and forecasting capabilities may evolve between the approval of the EP and the submittal of the APD, which could yield better data, especially when operations commence. Therefore, this proposed provision would require the operator to submit the specific detailed information to BSEE in connection with its APD and also to describe, in more detail and closer in time to commencement of drilling, how it would implement its weather and ice forecasting and management plan.

BSEE would expect operators to identify the specific weather and ice forecasting equipment and vessels that

they intend to utilize, including the name of the contractor that would deliver satellite imagery, if applicable. Such information should also be specific to the location and operations associated with the well that is the subject of the particular APD.

Finally, BSEE would require that an operator's weather and ice management capabilities would be uninterrupted for the entirety of their operations while on the Arctic OCS. This provision proposes that there would be no gap in weather and ice monitoring activities, including during transit between wells. This is to ensure that, upon arrival at a new well location, there are no unexpected weather or ice hazards that would interfere with drilling operations at the new location, or would pose a threat to the safety or integrity of the drilling equipment or personnel. The purpose of this proposed requirement is to ensure that hazards to drilling operations are avoided or managed before they could become a danger or an interruption to operations.

#### Paragraph (e), Relief Rig Plan

Paragraph (e) would require operators to provide, with their APD, information concerning how they would comply with the relief rig requirements of proposed § 250.472. See the discussion of that provision for an explanation of the nature of, and need for, those requirements.

#### Paragraph (f), SCCE Capabilities

Paragraph (f) would require operators who propose to use a MODU to conduct exploratory drilling operations on the Arctic OCS to provide with their APD information concerning their required SCCE capabilities when they are drilling below or working below the surface casing, including a statement that the operator owns, or has a contract with a provider for, SCCE capable of controlling and/or containing its identified WCD. Ensuring that an operator would be capable of responding to a loss of well control is one of the key goals of this proposed rule. In other parts of the OCS (*e.g.*, the Gulf of Mexico), there are several well-established contractors readily available to operators and extensive operations and infrastructure within the region from which resources could be drawn to respond to an event. However, resources are limited in the Arctic region due to the remote location and relative lack of infrastructure and operations. Therefore, operators proposing to conduct exploratory drilling on the Arctic OCS must demonstrate that they would have access to, and be capable of promptly deploying, adequate SCCE. Operators

must also describe how they would inspect, test, and maintain this equipment in order to ensure that it would remain fully functional and ready for use. These proposed requirements would help assure BSEE that operators conducting exploratory drilling under Arctic OCS Conditions are capable of: (1) Regaining control after a loss of well control event or (2) containing escaping fluids from a loss of well control event. The information requirements of paragraph (f) would include:

1. A detailed description of the operator's or its contractor's SCCE capabilities. The description must include operating assumptions and limitations and information demonstrating that the operator would have access to and the ability to deploy such equipment necessary to regain control of the well. This description would allow BSEE to verify the location and availability of this equipment for compliance with proposed § 250.471.

2. An inventory of the equipment, supplies, and services the operator owns or has a contract for locally and regionally, including the identification of each supplier. This information is important because BSEE would need to verify the existence, condition, and location of the equipment that the operator describes in its plans.

3. Where SCCE capabilities are obtained through contracting, proof of contracts or membership agreements with cooperatives, service providers, or other contractors, including information demonstrating the availability of the personnel and/or equipment on a 24-hour per day basis during operations below the surface casing. In an effort to minimize the environmental and social footprint of, and economic impediments to, Arctic OCS operations, BSEE is encouraging operators to share resources, especially standby equipment. This provision would facilitate the identification of those assets, and would allow BSEE to verify the contractual basis of any agreements necessary to provide the services required.

4. A description of the procedures for inspecting, testing, and maintaining SCCE. SCCE is intended to be standby equipment. However, BSEE needs to be assured that the equipment would remain able to function if it were needed. This provision would allow BSEE to verify that the operator, or contractor, has procedures in place for inspecting, testing, and maintaining the equipment so that it would be ready for use, if necessary. Operators are already required under existing regulations at § 250.1916 to retain the information

requested by this proposed new paragraph. The proposed provision would require that operators who propose to conduct exploratory drilling on the Arctic OCS submit this information in conjunction with their APD.

5. A description of the operator's plan to ensure that personnel are trained to deploy and operate the equipment and that they would maintain ongoing proficiency in source control operations. Standby crews who are not used regularly to perform their dedicated functions would not develop the necessary skills unless they are properly trained, and would not maintain those skills unless that training is reinforced by practice. It is therefore imperative that the operator demonstrate that these personnel have a plan for acquiring, and the ability to maintain, the proficiency necessary to respond when called upon. This requirement would allow BSEE to review those plans and verify that the proficiencies have been acquired and would be maintained.

Paragraph (g), API RP 2N, Third Edition

Paragraph (g) would require that operators explain how they utilized API RP 2N, Third Edition, in planning their Arctic OCS exploratory drilling operations. The API is updating this RP by adopting the entirety of ISO standard 'Petroleum and natural gas industries Arctic offshore structures,' First Edition (2010) (ISO 19906). Since the requirements of this proposed rule are limited only to exploratory drilling operations, operators would not be expected to provide an explanation of how they utilized the entire API RP 2N, Third Edition. This performance-based requirement would be limited to those portions of that document that are specifically relevant for exploratory drilling operations. BSEE proposes to exclude the following sections of API RP 2N, Third Edition, from incorporation:

1. sections 6.6.3 through 6.6.4;
2. the foundation recommendations in section 8.4;
3. section 9.6;
4. the recommendations for permanently moored systems in section 9.7;
5. the seismic analysis recommendations for pile foundations in section 9.10;
6. section 12;
7. section 13.2.1;
8. sections 13.8.1.1, 13.8.2.1, 13.8.2.2, 13.8.2.4 through 13.8.2.7;
9. sections 13.9.1, 13.9.2, 13.9.4 through 13.9.8;
10. sections 14 through 16; and
11. section 18.

Sections 6.6.3 and 6.6.4 would be excluded because they address different types of conditions for ice gouging and/or scouring than are anticipated to occur during the Alaska Arctic open water drilling season. The foundation criteria of section 8.4, the piled structure criteria of section 9.6, the requirements for permanently moored systems in section 9.7, and the requirements for seismic analysis of pile foundations in section 9.10 would be excluded because this rule only applies to MODUs drilling on a temporary basis, as opposed to the more permanent types of structures addressed in those provisions. Similarly, section 12 would be excluded because it applies only to fixed concrete structures and is outside the scope of this proposed rule. Section 13.2.1 (design philosophy for floating structures) would be excluded because similar ice forecasting and management issues are covered separately under proposed § 250.470(d). Sections 13.8.1.1, 13.8.2.1, 13.8.2.2, 13.8.2.4 through 13.8.2.7, 13.9.1, 13.9.2, and 13.9.4 through 13.9.5, would be excluded because they cover vessel design and procedures requirements under USCG jurisdiction. Sections 13.9.6 (inspection and maintenance), 13.9.7 (operations and planning for safety of personnel, the environment, and equipment), and 13.9.8 (ice management plans) would be excluded because similar requirements are addressed by other provisions of this proposed rule. Section 14 would be excluded because it relates only to subsea production systems while this proposed rule applies to MODUs engaged in exploratory drilling activities and because this rule proposes a different set of requirements for BOPs from that set forth in section 14.3.3. Section 15 (topsides design and operation) would be excluded because it does not generally apply to MODUs, and any parts that could be utilized for MODUs fall under USCG jurisdiction. Section 16 (ice engineering topics) would be excluded because it applies to structures that will remain in the ice and does not apply to MODUs. Section 18 (escape, evacuation and rescue) would be excluded because its provisions are already addressed under existing 30 CFR part 250 Subpart S and USCG rules.

BSEE recognizes that, when applied to MODUs, many of the structural criteria of API RP 2N, Third Edition, are regulated by the USCG and may be covered by Class requirements for marine structures. Classification is a determination made by private organizations (in accordance with USCG

requirements) that a vessel has been constructed and maintained in compliance with industry standards to be fit for a particular service, in this case Ice Class 3. Therefore, application of API RP 2N, Third Edition, for the purposes of this proposed rule would be limited to the non-marine structural components of MODUs. For example, Class requirements do not cover the derrick, plumbing, pipes, tubing, and pumps that are all also structural components of a MODU and that fall under BSEE jurisdiction. If incorporated in the final rule, BSEE would expect operators to comply with API RP 2N, Third Edition, for MODU components within BSEE jurisdiction. BSEE and the USCG have signed a Memorandum of Agreement for MODUs outlining the allocation of responsibilities between the agencies for fixed offshore facilities available at: [www.bsee.gov/BSEE-Newsroom/Publications-Library/Interagency-Agreements/](http://www.bsee.gov/BSEE-Newsroom/Publications-Library/Interagency-Agreements/); click on the link for 2013 BSEE/USCG MOA: OCS-08.

BSEE specifically requests comment on proposed draft API RP 2N, Third Edition, and on the extent to which BSEE should incorporate its provisions when finalized into the regulations. As an alternative to incorporation of API RP 2N, Third Edition, BSEE is considering incorporation by reference of ISO 19906, the ISO Arctic standard on which API RP 2N, Third Edition, is based. If BSEE incorporates the ISO standard in lieu of the API standard, the final rule would exclude the sections of the ISO standard corresponding to the excluded sections of API RP 2N previously discussed. BSEE requests comments on whether and to what extent BSEE should incorporate ISO 19906 in lieu of proposed draft API RP 2N, Third Edition.

BSEE is also considering incorporating the ISO standard "Petroleum and natural gas industries—Site-specific assessment of mobile offshore units—Part 1: Jack-ups," First Edition (2012) (ISO 19905-1), into the final rule, with application limited only to Arctic OCS exploratory drilling operations. ISO 19905-1 may be better suited than API RP 2N (or ISO 19906) to guide structural components for jack-up rigs. The API RP 2N (or ISO 19906) and ISO 19905-1 documents together would provide the most comprehensive structural requirements for the use of a jack-up rig in Arctic conditions. BSEE requests comments on the extent to which ISO 19905-1 should be

incorporated into these proposed Arctic regulations.<sup>7</sup>

What are the requirements for Arctic OCS source control and containment? (§ 250.471)

BSEE proposes to require operators to continue to adhere to all applicable source control and containment requirements in the current regulations, and to meet additional SCCE requirements for Arctic OCS exploratory drilling operations. BSEE is required to ensure that offshore oil and gas operations are conducted safely and in a manner that protects the environment from harm as a result of those operations. As stated earlier, the waters and surrounding environment of the Arctic region support a wide variety of marine mammals and other wildlife, including several Endangered Species Act (ESA) listed species and designated critical habitat. Furthermore, U.S. obligations under Article 4 of the Arctic Council's Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic, require that, for "areas of special ecological significance," each party "shall establish a minimum level of pre-positioned oil spill combating equipment, commensurate with the risk involved, and programs for its use[.]" The Arctic contains areas of ecological significance to the Nation as a whole, and especially to Alaska Native communities.

Therefore, it is imperative that any loss of well control during oil and gas exploratory drilling operations is corrected and/or contained as quickly as possible to minimize the impact of oil pollution on the environment. To accomplish this task, it would be necessary to have all equipment needed to cap and/or contain the release of fluids readily available in the event of a loss of well control during Arctic OCS exploratory drilling operations. Further, operations on the Arctic OCS are distinct from operations on any other part of the OCS. The logistics and the transit times necessary to respond to a well control event on the Arctic OCS, coupled with the difficulties associated with oil spill response operations in Arctic OCS Conditions, require the operator to plan for and be prepared for contingencies that would be more

<sup>7</sup> Copies of ISO 19905-1 may be purchased from ISO on its Web site (at [http://www.iso.org/iso/home/store/catalogue\\_ics.htm](http://www.iso.org/iso/home/store/catalogue_ics.htm)) or from commercial vendors. Copies of the ISO standards referred to in this proposed rule may also be viewed, upon request, at BSEE's Herndon, VA, office (at the address previously indicated or at BSEE's Regional Offices for Alaska, the Pacific, and the Gulf of Mexico).

straightforward to address in other theaters. There is limited ability in the Arctic region to summon additional source control and containment resources. Accordingly, operators working there must plan for response redundancies and planning complexities not required elsewhere.

The proposed requirements would apply to all exploratory drilling operations using a MODU on the Arctic OCS, regardless of the BOP configuration employed by the operation. These provisions are designed to ensure that each operator using a MODU would have access to, and could promptly and effectively deploy and operate, surface and subsea control and containment equipment in the event of a loss of well control. In particular, BSEE would require each operator to have the ability, in the event of a loss of well control, to cap the well and to capture, contain, and process or properly dispose of any fluids escaping from the well. All SCCE must be mobilized (*i.e.*, begin transit) to the well immediately upon a loss of well control. The rule would specifically provide that the SCCE is only necessary when drilling below or working below the surface casing.

This new section would require compliance with the following source control and containment requirements for all exploration wells drilled on the Arctic OCS.

#### Paragraph (a), Drilling Below or Working Below the Surface Casing

Paragraph (a) would require that the operator, when using a MODU to drill below or work below the surface casing, have access to a capping stack positioned to arrive at the well within 24 hours after a loss of well control, and a cap and flow system and a containment dome positioned to arrive at the well within 7 days after a loss of well control. These technologies are important because they have, either individually or in sequence, been proven to be effective at reacquiring control of wells and/or containing the flow of hydrocarbons after primary well control measures (such as well design and a BOP) have failed to prevent a well control event. The SCCE is intended to provide redundancy in the event of a loss of well control. Some of the well control events for which this equipment would be deployed could require a relief well to permanently plug and abandon the uncontrolled well.

On the Arctic OCS, the exploratory drilling operator would not be considered to have the required SCCE unless it is secured in advance and has the capability of arriving at the well

within the required timeframes. In the event that a BOP or other prevention mechanism fails to stop the flow of fluids, capping stacks would be necessary to provide an additional means to control flow from the well, where a stub or connector is accessible. Capping stacks are the preferred immediate first level redundancy, with the goal of controlling the well and stopping the discharge of fluids, and should be positioned so that they will arrive at the well within 24 hours after a loss of well control. Incidents in which the connectors or tubulars are not damaged would lend themselves to the use of a capping stack.

If the tubulars are damaged and the pressure cannot be managed with the capping stack, the remainder of the cap and flow system must be used as a secondary response. It must be positioned so that it will arrive at the well within 7 days of a loss of well control and designed to capture the WCD identified in the EP. If the cap and flow system were unable to stop or control the flow of fluids to the environment, or the well system were damaged to the point that the capping stack could not make a connection, the containment dome system, which also must be positioned to arrive at the well within 7 days of a loss of well control, would need to be used to capture the hydrocarbons flowing to the environment, as a tertiary response. Thus, the SCCE system, as a whole, would provide a level of redundancy and flexibility necessary to operate on the Arctic OCS.

BSEE specifically requests comment on all of the proposed timeframes for arrival of SCCE at the well in the event of a loss of well control. In particular, BSEE invites comments on whether such timeframes are appropriate, from a logistical and feasibility perspective, to address a loss of well control. BSEE also requests comment on whether the cap and flow system and containment dome could be available and positioned to arrive at the well within 3 days, or some shorter amount of time than 7 days.

#### Paragraph (b), Stump Test

Paragraph (b) would require monthly stump tests of dry-stored capping stacks, and stump tests prior to installation for pre-positioned capping stacks. The presence of the equipment alone is not sufficient to ensure the reliability of the system. Testing of the equipment must be done on a regular basis. This proposed rule would impose a requirement that any capping stack that is dry stored must be stump tested (function and pressure tested to prescribed minimum and maximum

pressures on the deck in a stand or stump where it could be visually observed) monthly. The rule would also require that pre-positioned capping stacks be tested prior to each installation on a well to assure BSEE that no damage was done during the prior deployment or transit.

#### Paragraph (c), Reevaluating SCCE for Well Design Changes

Paragraph (c) would require a reevaluation of the SCCE capabilities if the well design changes because some well design changes may impact the WCD rate. If the operator proposes a change to a well design that impacts the WCD rate, the operator must provide the new WCD rate through an Application for Permit to Modify (APM), as required by § 250.465(a). The operator must then verify that the SCCE would either be modified to address the new rate or that the previously proposed system would be adequate to handle the new WCD to demonstrate ongoing compliance with the SCCE capability requirements previously addressed.

#### Paragraph (d), SCCE Tests or Exercises

Paragraph (d) would require the operator to conduct tests or exercises of the SCCE when directed by the Regional Supervisor. Similar to the requirement that equipment be tested periodically, BSEE has concluded that there is a need to ensure that personnel are prepared and that they, and the SCCE, would be capable of performing as intended. Therefore, BSEE proposes to require that operators conduct tests and exercises (including deployment), at the direction of the Regional Supervisor, to verify the functionality of the systems and the training of the personnel.

#### Paragraphs (e) and (f), SCCE Records Maintenance

Paragraph (e) would require the operator to maintain records pertaining to testing, inspection, and maintenance of the SCCE for at least 10 years, and make them available to BSEE upon request. This information would facilitate a review of the effectiveness of the operator's inspection and maintenance procedures and provide a basis of review for performance during any drill, test, or necessary deployment. Because of the limited drilling season on the Arctic OCS, the 10-year record retention requirement is necessary in order to ensure the availability of a meaningful longitudinal data set. Additionally, the limited drilling season means that this equipment would be infrequently used and might be stored for long periods of time between seasons. Thus, a 10-year record

retention requirement is necessary to ensure enough cumulative data is gathered to assess overall equipment performance and trends.

Paragraph (f) would require the operator to maintain records pertaining to use of the SCCE during testing, training, and deployment activities for at least 3 years and to make them available to BSEE upon request. The use of the equipment during testing and training activities and actual operations must be recorded, along with any deficiencies or failures. These records would allow BSEE to address any issues arising during the usage and to document any trends or time-dependent problems that would develop over the record retention period. In the event that the equipment is used in a well control incident, the records are necessary to document the effectiveness of the response and functioning of the equipment.

#### Paragraphs (g) and (h), Mobilizing and Deploying SCCE

Paragraph (g) would require operators to mobilize (*i.e.*, initiate transit of) SCCE to a well immediately upon a loss of well control and deploy (*i.e.*, position for use) and use SCCE. Paragraph (h) would give the Regional Supervisor the authority to require the operator to deploy and use SCCE independent of an operator's determination of whether or not to deploy and use SCCE. Requiring immediate mobilization would prevent operators from delaying the transit of SCCE equipment to the well in the hope that other source control or containment methods will be successful. This provision would ensure that all SCCE is available and ready for use. Also, this provision is being proposed to clarify the Regional Supervisor's discretion to require the deployment and use of SCCE in the event of a loss of well control or for purposes of SCCE training and exercises. The Regional Supervisor's authority is specifically addressed here to allow the Regional Supervisor to act in a timely manner should a loss of well control occur.

What are the relief rig requirements for the Arctic OCS? (§ 250.472)

As demonstrated by past loss of well control events around the globe, in some cases it may be necessary to drill a relief well to permanently plug an uncontrolled well. The SCCE is an interim solution designed to minimize environmental harm from well control events, but the ultimate solution may need to be accomplished by a relief well. Arctic OCS exploratory drilling operations would take place in a region that has little or no infrastructure, that

is subject to variable and sometimes extreme weather, and in which transportation systems could be interrupted for significant periods of time. Also, Arctic OCS exploratory drilling operations are complicated by the fact that they currently take place only during the "open water season," or that period of time in the summer and early fall when ice hazards can be physically managed and there is no continuous ice layer over the water. Outside of that window, ice encroachment may complicate or prevent drilling and transit operations, and for that reason it is critical to ensure that drilling (including relief well drilling if necessary) and other operations affected by sea ice are concluded before ice encroachment. Furthermore, if there is a loss of well control during the drilling season, it is also important to ensure that, if a relief rig is necessary to stop the uncontrolled flow of oil, the relief rig is available and able to complete all necessary operations in as short a time as possible. Thus, while conducting exploratory drilling operations below the surface casing on the Arctic OCS, it is essential to position or designate a relief rig in a location that would enable it to transit to the well site, drill a relief well, plug the original well, plug the relief well, and demobilize from the site prior to expected seasonal ice encroachment. This would require the cessation of exploratory drilling or other work below the surface casing far enough in advance of the expected return of seasonal ice to allow for completion and abandonment of a relief well.

The proposed rule would establish a 45-day maximum limit on the time necessary to complete relief well operations. This timeframe is necessary to acknowledge the relative lack of infrastructure and active operations from which response resources could be drawn in the region, as well as the grave threats of a prolonged loss of well control to the Arctic environment. If an operator were to use a pure standby rig (*i.e.*, a rig that is not otherwise operating in the Arctic), Dutch Harbor is the nearest deep-water port where the standby rig could be stationed. BSEE estimates that it would take 20 days to get the rig ready and to transit from the nearest U.S. deep-water port (Dutch Harbor) to the farthest well location (Beaufort leases), 20 days to drill the relief well, and 5 days to plug the uncontrolled well, test it, and move off the well site. If, on the other hand, an operator were to use a second drilling rig to serve as a relief rig for another drilling rig, the time required to

complete relief well operations could be much shorter than 45 days because the second rig would already be operating in the Arctic OCS and would require shorter transit time than a standby relief rig staged in Dutch Harbor or at another location.

BSEE considered imposing prescriptive geographic limitations on the staging of relief rigs in proximity to exploratory drilling operations, but chose instead to propose a performance-based requirement to provide operators the flexibility to choose how best to comply with the relief rig obligations. Operators would need to demonstrate their ability to complete relief well operations within a maximum of 45 days, subject to BSEE's review in the APD process (*see* proposed § 250.470(e)). The proposed rule would also authorize the Regional Supervisor to direct an operator to begin drilling the relief well.

The relief rig could be stored in harbor, staged idle offshore, or actively working, as long as it would be capable of physically and contractually meeting the proposed 45-day maximum timeframe. However, any relief rig must be a separate and distinct rig from the primary drilling rig to account for the possibility that the primary rig could be destroyed or incapacitated during the loss of well control incident.

Of course, an operator's actual timeframe to drill a relief well would be based on consideration of the distance between anticipated exploratory drilling sites, the availability of adequate staging locations for relief rigs, the length and complexity of rig transit under Arctic OCS Conditions, and the time necessary to complete the requisite operations once on-site. Thus, BSEE specifically requests comment on whether the maximum time limit for deploying a relief rig and drilling a relief well should be more or less than 45 days.

The proposed rule expressly provides that the relief rig would only be necessary when drilling below or working below the surface casing (*i.e.*, where contact with hydrocarbons capable of flowing into the well could occur). BSEE recognizes that the proposed relief rig requirement may effectively limit the number of days an operator can work below the surface casing at the end of each drilling season. The actual length of this limitation would depend on the operator's plans for staging and deploying a relief rig and could extend up to 45 days before the end of the drilling season (*e.g.*, the projected return of sea ice). During this period, however, an operator may be able to conduct a number of different operations at the well site that do not

involve work below the surface casing. Such work can significantly advance an exploratory drilling project and can help an operator prepare to conduct work below the surface casing during the following drilling season. BSEE requests comments on the different types of work (above the surface casing) that could be performed during the time period set aside for a relief well to be drilled, if needed, as well as the economic benefits and costs associated with this work.

While a relief well is the most reliable, and in some circumstances the only available, solution to kill and permanently plug an out-of-control well, there could be circumstances in which control could be regained without intervention by a relief well. Accordingly, BSEE also requests comment on whether there are any alternative technological methods, in addition to a relief well, to kill and permanently plug an out-of-control well before seasonal ice encroachment. Comments should include, where possible, specific technological solutions, descriptions of the conditions under which an alternative method could successfully kill and permanently plug a well, and any research that would demonstrate the effectiveness of such an alternative.

For example, some stakeholders have proposed that the use of subsea shut-in devices (SIDs) located on the seafloor could help significantly reduce the risk of a release of hydrocarbons if the BOP system fails. SID equipment is specifically designed to act as a redundant safety system and ensure the safe and timely shut-in of a well in an emergency. Although BSEE believes that timely access to a relief rig is the surest way to permanently resolve a WCD event in the Arctic, the use of SIDs could reduce the risk of a release of hydrocarbons and potentially justify giving operators more flexibility in the staging of relief rigs.

Thus, BSEE requests comments on alternative compliance approaches and specifically requests data on the performance of SIDs, including operational issues (such as timeframes needed to activate such alternatives). In particular, BSEE requests comments on appropriate staging requirements for a relief rig assuming that an SID has been installed at the exploration well. Comments are also requested on the need for an operator to have an in-season relief well drilling capability if an SID is used at a location that is not subject to ice scouring.

BSEE also requests information or data comparing the relative safety and environmental risk levels, as well as the costs, of the equipment and procedures

that would be required under the proposed regulations to the risks and costs of equipment and procedures under any suggested alternative approach.

In any case, BSEE's existing regulations allow operators the flexibility to develop new technological solutions and to seek approval for the use of those solutions to fulfill their regulatory obligations. Under 30 CFR 250.141, operators may request approval to use alternative equipment or procedures for any specified requirement, provided that the operator is able to demonstrate an equivalent or improved level of safety and environmental protection. This performance-based provision is a key part of BSEE's regulatory program, which is a combination of prescriptive and performance-based requirements, because it gives operators the ability to comply with regulatory requirements through a variety of methods if they can make the necessary demonstrations to BSEE. It also serves to encourage the development and utilization of alternative technologies to satisfy the specific requirements contained in the regulations.

What must I do to protect health, safety, property, and the environment while operating on the Arctic OCS? (§ 250.473)

BSEE proposes to add a new § 250.473 that would require performance-based measures in addition to those listed in § 250.107 to protect health, safety, property, and the environment during exploratory drilling operations on the Arctic OCS.

Paragraph (a) would require that all equipment and materials proposed for use in exploratory drilling operations on the Arctic OCS be rated or de-rated for service under conditions that could be reasonably expected during operations. Arctic OCS Conditions place strains on operating equipment not experienced elsewhere on the OCS. This necessitates that such equipment be rated or de-rated for use under such conditions in order to ensure that it could operate safely and effectively.<sup>8</sup> For example, cranes must be designed to withstand ice loads that can be anticipated to build up during Arctic OCS operations and operational limitations of components under extreme cold temperatures (e.g., reduced tensile strength) must be understood and accounted for. Also, capping and containment equipment must be specifically designed to

withstand the demands of regional conditions. The Arctic Council made similar recommendations for equipment and materials in its 2009 report on Arctic oil and gas operations (see Arctic Council—Arctic Offshore Oil and Gas Guidelines (2009)).

BSEE's existing regulation at § 250.418(f) requires that operators include in their APD "evidence that the drilling equipment, BOP systems and components, diverter systems, and other associated equipment and materials are suitable for operating" in areas subject to subfreezing conditions, while proposed § 250.473(a) would establish a requirement for use of appropriately rated or de-rated equipment and materials. Operators may ensure that proposed materials and equipment are rated or de-rated appropriately by referencing manufacturer specifications and would not need to obtain equipment or material rating by an independent third-party rating entity. Upon finalization of this provision, failure to use appropriately rated or de-rated equipment and materials could subject an operator or its contractor to enforcement action by BSEE.

Paragraph (b) would require operators to employ measures to address human factors associated with weather conditions that can be reasonably expected during Arctic OCS exploratory drilling operations. This provision is designed to ensure safety of the workforce and protection of the environment by requiring operators to account for weather conditions that might impact decision-making and personnel health and safety. On the Arctic OCS, the workforce would encounter harsh environmental conditions, including extreme cold, snow, ice, and freezing spray, which could cause, among other medical conditions, frost bite and breathing difficulties that can impair performance and judgment. Measures that operators would be required to use to address human factors include, but are not limited to, provision of proper attire and equipment, construction of protected work spaces, and management of shifts.

What are the auditing requirements for my SEMS program? (§ 250.1920)

In 2013, BSEE published an update to Subpart S, which established additional measures operators must take to manage safety and to protect the environment during their OCS operations. The requirements under this subpart are designed to be performance-based to allow operators to tailor their management systems to their particular operations, including operations on the Arctic OCS. For example, a hazards

analysis for a facility on the Arctic OCS would account for the types of hazards expected on the Arctic OCS, like ice floe. Similarly, Job Safety Analyses must account for Arctic OCS Conditions, such as ice, extreme cold, snow, and freezing spray. BSEE would not consider an operator's SEMS to be effective under § 250.1924 if it were not specifically tailored to the Arctic OCS Conditions reasonably anticipated at the facility in question.

Similarly, existing §§ 250.1914 and 250.1924 give BSEE broad authority to require that operators on the Arctic OCS provide BSEE with information such as the names of contractors and the specific scope of their duties and timelines for performance in support of an operator's drilling activities. For example, if an operator planned to use a contractor for waste disposal, cementing, or logging, BSEE would expect the operator to inform BSEE of this intent, along with any other operations contracted out, and the names of those contractors. Because the existing performance-based SEMS regulations are adequate to cover Arctic OCS operations when properly implemented, no major modifications are needed to Subpart S for the Arctic OCS. However, additional provisions are necessary to bolster auditing expectations for Arctic OCS exploratory drilling operations.

This rule proposes to increase the audit frequency and facility coverage for intermittent Arctic OCS exploratory drilling operations. While operators are generally required to conduct their SEMS audit every 3 years after their initial audit, BSEE believes it would be critical to perform a SEMS audit of Arctic OCS exploratory drilling operations and all related infrastructure each year in which drilling is conducted, because of the particularly challenging conditions and high-risk nature of those activities. This Arctic OCS audit would require operators to ensure that all safety systems are in place and functional prior to commencing or resuming activities for a new drilling season, as well as to conduct the offshore portion of the audit while drilling is under way. An operator conducting Arctic OCS exploratory drilling operations may not combine its Arctic OCS facility audit(s) with audits of its non-Arctic OCS facilities to satisfy the facility sampling requirements incorporated into Subpart S.

As with SEMS audits in other OCS regions, there would be an onshore and offshore portion. However, for Arctic OCS exploratory drilling operations, an operator would be required to submit a separate audit report and corrective

<sup>8</sup> It is likely that Arctic Conditions could have an adverse impact on the performance of some equipment and result in this equipment being operated below the rated maximum performance level.

action plan (CAP) for the onshore and offshore portions of its audit. To provide an opportunity for BSEE to review the onshore portion of the audit report and CAP prior to commencement of drilling, they must be submitted no later than March 1st in any year in which drilling is planned. The operator would also be required to start and close the offshore portion of the audit within 30 days after first spudding of the well or entry into an existing wellbore for any purpose from that facility. The operator would be required to submit the audit report and CAP from the offshore portion of the audit within 30 days of the close of that portion of the audit. This is designed to enable the auditors to analyze offshore operations while they are actively underway, and to ensure that BSEE is made aware of any issues surrounding those operations as soon as practicable. To ensure that any critical problems that are revealed by the audit are addressed, BSEE would be able to order all or part of the operations to be shut down, if necessary.

### Oil Spill Response

#### *Part 254—Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line*

##### Definitions. (§ 254.6)

This section would include a revised definition of *Adverse weather conditions* and add new definitions of *Arctic OCS* and *Ice intervention practices*. These definitions are necessary because they are important in establishing the standard for response capability based on environmental conditions unique to the Arctic region.

*Adverse weather conditions*—The current regulations contain a definition for the term “adverse weather conditions,” which means conditions under which spill response activities are difficult but nevertheless required to proceed. The concept reflects the fact that operators are required to pursue oil spill response activities in all but the most severe conditions where such activities would become particularly dangerous or impossible. This term is important, especially for Arctic OCS exploratory drilling, because it describes the difficult conditions in which a response is still expected to occur and excludes conditions that present too much of a risk to responder health and safety for a response to proceed. Operators are expected to consider the delays and challenges resulting from adverse weather when developing their OSRP. The resulting response strategies should reflect the right type and amount of resources necessary to effectively respond to a WCD scenario that would

include adverse weather conditions on the Arctic OCS and should factor in anticipated disruptions or delays that could result from operational periods where conditions would exceed safe operating parameters and prohibit spill response activities from occurring.

BSEE proposes to add more specific weather terms, *i.e.*, extreme cold, freezing spray, snow, and extended periods of low light, to this definition for clarity regarding the weather conditions in which we expect lessees or operators to be able to conduct response operations on the Arctic OCS. The addition of this terminology is intended to ensure that operators procure equipment that could respond in these difficult, but feasible, conditions and utilize spill response technology that would be suitable for weather conditions encountered within the Arctic region. With this outcome in mind, we considered establishing quantitative descriptions specific to ice and temperature. For example, to ensure that identified response capabilities would be able to operate in certain levels of ice, one option considered was to include 30 percent ice coverage as a condition under which BSEE would expect response activities to proceed. However, BSEE concluded that using qualitative terms would allow the maximum flexibility in determining the appropriate performance-based approach necessary to respond quickly and effectively to an operator’s WCD to the maximum extent practicable, under conditions reasonably anticipated during operations. This could encourage research and development, including Federally funded projects, to continue to enhance the standard response capabilities.

*Arctic OCS* — For an explanation of the definition of Arctic OCS, see the definitions discussion at the beginning of the Section-by-Section analysis.

*Ice intervention practices*—This new term describes the equipment, vessels, and procedures used to increase the effectiveness of response techniques and equipment in encountering and mitigating the impacts of spilled oil when sea ice is present. After oil spreads over a broad area, the ability to recover, burn, or disperse oil depends on the rate at which the oil can be identified, tracked, and encountered (*i.e.*, encounter rate). When ice is present during efforts to mitigate the impacts of spilled oil, the ice could act as a barrier that would obscure, limit, or prevent access to the oil, and could also interfere with the proper operation of response equipment. Accordingly, ice presents unique and significant challenges, and it is important that

operators develop equipment and strategies to respond to such challenges.

The other purpose of this definition is to specifically differentiate terminology used to describe tactics for responding to oil in water containing sea ice from terminology used to describe resources and tactics employed to manage ice during drilling operations. An operator’s OSRP must address ice intervention practices specifically intended to increase the effectiveness of an oil spill response operation. This term relates to a new requirement for the “emergency response action plan” section of OSRPs for Arctic OCS facilities, proposed at § 254.80(a). Please refer to the discussion related to that provision for further explanation of the need for, and importance of, this item in operators’ OSRPs.

Spill response plans for facilities located in Alaska State waters seaward of the coast line in the Chukchi and Beaufort Seas. (§ 254.55)

The OSRPs for facilities in State waters seaward of the coast line must be submitted to BSEE for approval and must comply with the requirements in Subpart D. The proposed provision would require the OSRP for any facility conducting exploratory drilling from a MODU in Alaska State waters seaward of the coast line within the Beaufort or Chukchi Seas to address the additional requirements set forth in the new proposed Subpart E, discussed in detail later. BSEE has determined that the considerations justifying the various provisions of proposed Subpart E would also apply to these operations.

Some requirements in Subpart E address planning and exercises related to the use of source control and subsea containment equipment such as capping stacks or containment domes. Operators would be required to have access to and use this equipment when conducting exploratory drilling from a MODU on the Arctic OCS, pursuant to proposed regulations in Part 250, but those conducting similar activities in State waters are not currently subject to the same requirements. The State of Alaska, however, has State requirements for source control. As such, a response plan covering operations in State waters of the Beaufort or Chukchi Seas must address how the source control procedures selected to comply with State law would be integrated into the planning, training, and exercise requirements of proposed §§ 254.70(a), 254.90(a), and 254.90(c).



*Subpart E—Oil-Spill Response Requirements for Facilities Located on the Arctic OCS*

Purpose (§ 254.65)

This rulemaking proposes to create a new Subpart E, in order to provide owners and operators of exploratory drilling facilities on the Arctic OCS with additional requirements for oil spill response preparedness that would address the challenging conditions that operators would likely encounter on the Arctic OCS. The main purpose for the proposed language is to establish specific planning requirements that would maximize oil spill response technology application and emphasize a complete response system that would be designed to address the environmental and logistical challenges inherent to spill response activities in the Arctic OCS region. This would include planning for a WCD that occurs late in the drilling season.

BSEE chose to create a new subpart instead of incorporating the specific requirements throughout its existing regulatory provisions. This is similar to the approach that was taken to address requirements specific to State waters in Subpart D. It is important to note that Subpart E would add requirements for operations on the Arctic OCS and that all other applicable requirements in Part 254 would still apply. BSEE chose to reserve §§ 254.66 through 254.69; §§ 254.71 through 254.79; and §§ 254.81 through 254.89 within proposed Subpart E.

What are the additional requirements for facilities conducting exploratory drilling from a MODU on the Arctic OCS? (§ 254.70)

BSEE proposes to add § 254.70 that would address general oil spill response planning requirements for operators using MODUs to conduct exploratory drilling on the Arctic OCS. These requirements include incorporating the support mechanisms for capping stacks, cap and flow systems, containment domes, and other similar subsea and surface devices and equipment and vessels, required by proposed § 250.471, into oil spill response incident action planning. They would also require operators to address the influence of adverse weather conditions on responders' health and safety during spill response activities. Finally, they would require operators, prior to resuming seasonal exploratory drilling activities, to review their OSRPs, and modify as necessary, to address changes to the location or status of response resources or the arrangements for supporting logistical infrastructure

arising from extended periods of time without drilling.

Paragraph (a) would address the need to integrate emergency well control and containment equipment and personnel into spill response planning to ensure coordination during a loss of well control event. Regaining control over the well and containing discharged liquids is the first line of response to a well control incident, following failure of primary prevention devices. Accordingly, it is critical that those efforts be integrated and coordinated with the spill response efforts designed to remove or treat oil in the water that would proceed at the same time. Although requirements for well control and containment equipment operability and safe use fall under regulations based on the OCSLA, its integration with the oil spill response activities is imperative. Active information sharing through coordinated planning efforts will ensure that oil spill response and source control and containment operations would be synergistic and mutually understood when called upon to function together in the event of a loss of well control.

Paragraph (b) would address responder health and safety by ensuring that the correct resources would be available to protect responders from hazards specific to the Arctic region. It is critical for operators to address in their OSRPs the influence of adverse weather conditions, including extreme cold, snow, ice, freezing spray, and extended periods of low light, on spill response personnel. These conditions could impair human decision-making and physical abilities and create risks to personnel, operations, and the environment. Accordingly, this provision would require that operators describe in their OSRPs the steps they would take to address those factors to ensure that their planned oil spill response activities could be conducted in a safe and effective manner. The types of considerations that BSEE would expect to be addressed include, but are not limited to, proper attire and equipment, protected work spaces, and proper shift management. The objective would be to ensure that the equipment needed to protect human health against adverse weather conditions would be available immediately when a response is required.

Paragraph (c) would address specific challenges to maintaining preparedness to respond to a spill when drilling is seasonal and there are extended periods without any risk of an oil discharge. One of the substantial challenges presented by operations on the Arctic OCS is the seasonal drilling limitation

resulting from the prevalence of sea ice on portions of the waters overlying the Arctic OCS during all but the summer and early fall months. This limitation precludes active exploratory drilling operations from MODUs on the OCS for up to 8 months of the year, potentially leaving associated response equipment, materials, and personnel idle for extended periods of time or leading to their use in other regions of the OCS or elsewhere.

It is important for operators to ensure that their spill response capabilities would not deteriorate or lose their effectiveness due to such extended periods of inactivity and to ensure that they would remain capable and adequate to conduct a quick and effective response to an oil spill during active exploratory drilling operations. While BSEE encourages owners or operators with approved OSRPs to commit to a continuous exercise, training, and equipment maintenance regime that inherently builds response skills over time, the Arctic OCS seasonal drilling limitations challenge the practicality of continuously maintaining these capabilities while there is not a risk of a discharge. To address this challenge, BSEE would require that owners or operators, in connection with seasonal exploratory drilling activities, review and submit modifications to their OSRP as appropriate, to demonstrate that all required resources would be ready, before oil is handled, stored, or transported, to respond to a spill to the maximum extent practicable. This OSRP review and update would address resource allocations, changes, and, most importantly, the re-establishment of resource readiness well before there is a risk of discharge. BSEE would review and approve proposed OSRPs for resource maintenance during extended periods without drilling activity through established OSRP approval, modification, revision, and update processes described in §§ 254.2, 254.30, and 254.53, and the proposed update described in this section.

What additional information must I include in the "Emergency response action plan" section for facilities conducting exploratory drilling from a MODU on the Arctic OCS? (§ 254.80)

BSEE also proposes to create a new § 254.80 that would focus on additional information requirements for the emergency response action plan section of an OSRP when the operator proposes to conduct exploratory drilling operations from a MODU on the Arctic OCS. The additional requirements would include specifics regarding ice

intervention practices, staging considerations, and tracking abilities.

Sea ice could reduce the effectiveness of spill response techniques by limiting access to spilled oil and decreasing oil encounter rates. Therefore, in paragraph (a), BSEE would require Arctic OCS exploratory drilling operators to describe their ice intervention practices and how they would improve the effectiveness of spill response equipment and response strategies in the presence of sea ice. Increasing oil encounter rates when sea ice is present maximizes efficiency in removing or mitigating the adverse impacts from oil in the water as quickly and effectively as possible. The necessary practices and equipment would work to mitigate the impacts of ice on response operations and extend the period in which oil spill response activities could occur. They would also ensure that appropriate ice management vessels would be included when determining equipment requirements that would enhance all response options and strategies included in the plan.

Operators must ensure that they would have the capability to initiate a rapid response to the site of an offshore oil spill, as well as to sustain and, when necessary, repair response equipment on-site without having to rely on shore-based assets that could become inaccessible due to weather conditions or other factors. Due to the remote locations where Arctic OCS exploratory drilling operations would occur, and the limited infrastructure and logistical support capabilities in the coastal communities, operators would need to consider strategic staging locations and support mechanisms for effectively deploying and resupplying oil spill response resources. For the Arctic OCS, initial response capabilities, in many instances, would need to be based offshore to effectively meet the requirements in Part 254. Pursuant to paragraph (b)(1), operators would be required to describe how they would maintain assets in close proximity to exploratory drilling operations to ensure that adequate response times would be achievable and response operations would be sustainable. The weather conditions that are common to the area (e.g., dense fog, high sea states) often preclude access to the area by small vessels and aircraft for days at a time. The ability to mount and maintain an expeditious response once a release occurs would be negatively impacted if response assets or supporting materials were significantly delayed from arriving at the spill site due to inclement weather. Accordingly, operators must establish an offshore resource

management system to ensure that vessels and equipment would be readily available, along with sufficient personnel and berthing, to carry out response activities.

The limited support and response capabilities and capacities that exist in most Alaska coastal communities mandate that operators provide for nearly all aspects of an oil spill response on the Arctic OCS. Paragraph (b)(2) would require operators to identify how they intend to ensure an immediate and uninterrupted flow of supplies, response equipment, personnel, and shore-based support services to sustain the response activities until terminated by the Unified Command.<sup>9</sup> The components of the logistics supply chain include, but are not limited to: Personnel and equipment transport services; airfields and types of aircraft that can be supported; capabilities to mobilize supplies (e.g., response equipment, fuel, food, fresh water) and personnel to the response sites; onshore staging areas, storage areas that may be used *en route* to staging areas, and camp facilities to support response personnel conducting offshore, nearshore and shoreline response; and management of recovered fluid and contaminated debris and response materials (e.g., oiled sorbents), as well as waste streams generated at offshore and on-shore support facilities (e.g., sewage, food, and medical). Operators must also plan to implement mitigation measures to reduce the impacts that surged personnel, equipment, and increased activity would have on communities where staging areas, camp facilities, and waste handling sites are established.

In paragraph (c), BSEE proposes to require operators to describe how they would maintain an effective tracking and management system that is able to locate in real time all response equipment and personnel conducting response activities, or transiting to and from the response site(s), and to maintain a current picture of resources entering and exiting staging areas and the operational status of those resources. This system would be essential to provide the Unified Command with information necessary to ensure that sufficient personnel and equipment would be available to meet the response needs.

Part 254 requires operators to describe all equipment they plan to use to respond quickly and effectively to an oil spill to the maximum extent practicable.

<sup>9</sup>The Unified Command is a response construct under the incident command system headed by Federal authorities and coordinated with the State and other parties.

For oil spill response planning, BSEE would not consider it adequate preparedness for an operator to assume that the Federal On-Scene Coordinator would call upon assets under the control of other entities during a response. As previously mentioned in the Part 550 discussion, it is important to note that an effective and immediate removal or mitigation of a discharge must be achieved to the maximum extent practicable by private sector efforts.

What are the additional requirements for exercises of your response personnel and equipment for facilities conducting exploratory drilling from a MODU on the Arctic OCS? (§ 254.90)

BSEE proposes to create a new § 254.90 that would require operators to incorporate the additional requirements contained within proposed §§ 254.70 and 254.80 into their oil spill response training and exercise activities; would require operators to provide notice of the commencement of covered operations; and would clarify the authority of the Regional Supervisor to conduct exercises, prior to and during exploratory drilling operations, to test response preparedness. These requirements are all essential to ensuring and verifying an operator's readiness to conduct response activities on the Arctic OCS.

As described previously with respect to proposed § 254.70(a), it is essential that the relevant support mechanisms (personnel, materials, and vessels) for capping stacks, cap and flow systems, and containment domes, and other similar subsea and surface devices and equipment and vessels, be integrated and coordinated with the spill response planning and activities that would take place alongside them, and that those arrangements are suitable for deployment on the Arctic OCS. Accordingly, proposed § 254.90(a) would require that operators incorporate the required personnel and equipment into spill-response training and exercises to ensure the necessary and appropriate level of coordination between source control and subsea containment activities and spill response activities.

Similarly, to ensure that these training and exercise activities would accurately reflect and test the full scope of response capabilities necessary for Arctic OCS operations, proposed § 254.90(a) would also require that operators incorporate other proposed response plan features from proposed §§ 254.70 and 254.80 into those activities. As outlined in proposed § 254.90(c), the Regional Supervisor

may direct operators to deploy response resources, as part of announced or unannounced exercises, to verify an operator's preparedness for responding to a spill on the Arctic OCS. These exercises might include the deployment of capping stacks, cap and flow systems, containment domes, or other supporting

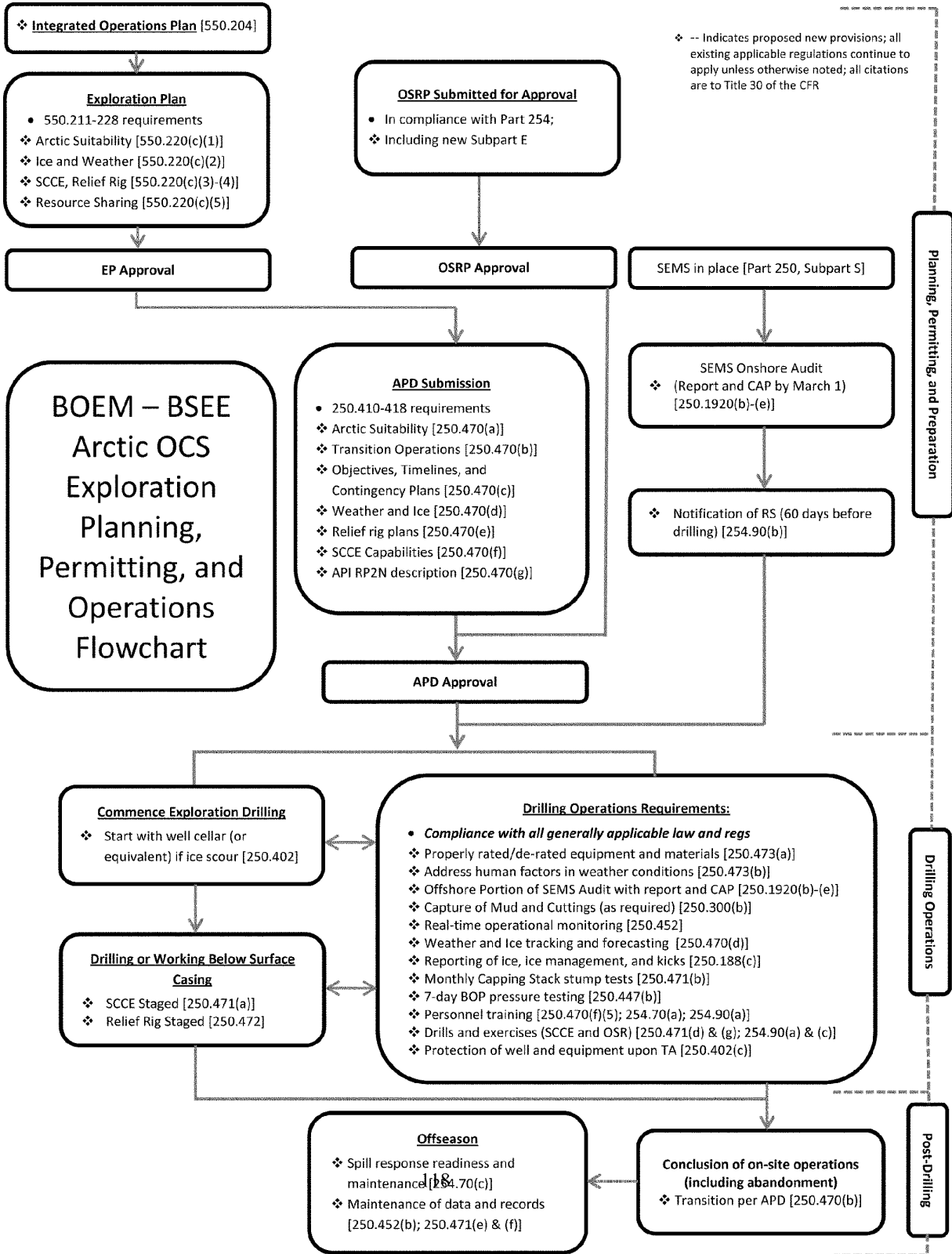
equipment in order to test their integration and coordination with other oil spill response activities. However, SCCE is not required to be deployed under the annual and triennial equipment deployment requirements outlined in § 254.42(b)(2).

Finally, proposed § 254.90(b) would require operators planning to conduct

exploratory drilling from a MODU on the Arctic OCS to provide 60-days' notice before handling, storing, or transporting oil to give BSEE adequate opportunity to verify that the operator's personnel and equipment are in compliance with existing regulations.

D. Arctic Exploratory Drilling Process Flowchart

BILLING CODE 4310-VH-; 4310-MR-P



BILLING CODE 4310-VH-; 4310-MR-C

## V. Conclusion

Overall, the proposed rule would further the Nation's energy goals in prudently exploring frontier areas, such as those in the Arctic OCS, by establishing operating models and requirements tailored specifically to the extreme, unpredictable, and rapidly changing conditions that exist in the Arctic region. The proposed regulations reflect the need for earlier and more comprehensive planning of operations, particularly with respect to emergency response and safety systems. The proposed Arctic OCS exploratory drilling rule would institutionalize a proactive approach to safety. Vulnerabilities would be identified in the planning phase and corrections would be made to reduce the likelihood of an incident occurring. The proposed rule would also ensure that those plans would be carried forward and executed in a manner that would ensure safety and environmental protection under the challenges presented to operations by Arctic OCS Conditions.

Finally, the proposed rule would integrate emergency response, comprehensive operational and safety planning, contractor oversight, and upfront mutual aid agreements. The proposed combination of prescriptive and performance-based requirements would precipitate robust consideration of how safe exploration of the Arctic region is to be achieved.

## VI. Procedural Matters

### A. Regulatory Planning and Review (E.O. 12866 and E.O. 13563)

Changes to Federal regulations must undergo several types of economic analyses. First, E.O. 12866 and E.O. 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select a regulatory approach that maximizes net benefits (accounting for the potential economic, environmental, public health, and safety effects). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Under E.O. 12866, an agency must determine whether a regulatory action is significant and, thus, subject to the requirements of the E.O. and OMB review. Section 3(f) of E.O. 12866 defines a "significant regulatory action" as any rule that:

1. Has an annual effect on the economy of \$100 million or more, or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or tribal governments or communities (also referred to as "economically significant");

2. Creates serious inconsistency or otherwise interferes with an action taken or planned by another agency;

3. Materially alters the budgetary impacts of entitlement grants, user fees, loan programs, or the rights and obligations of recipients thereof; or

4. Raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

### B. E.O. 12866

E.O. 12866 provides that OMB's Office of Information and Regulatory Affairs will review all significant rules. Pursuant to the procedures established to implement § 6 of E.O. 12866, OMB has determined that this proposed rule is significant because the estimated annual costs or benefits exceed \$100 million in at least one year of the analysis period. The following discussion summarizes the economic analysis; a more detailed Initial RIA can be found in the regulatory docket for this proposed rule at [www.regulations.gov](http://www.regulations.gov) (in the Search box, use BSEE-2013-0011). BOEM and BSEE request comments on the assumptions used in the Initial RIA and on other possible alternatives to consider, including alternatives to the specific provisions contained in the proposed rule.

#### 1. Need for Regulation

This proposed rule seeks to enhance requirements for safe, effective, and responsible Arctic OCS oil and gas activities. Although there is currently a comprehensive OCS oil and gas regulatory program, DOI engagement with partners and stakeholders, including environmental groups and Alaska Natives, reveals the need for new and enhanced regulatory measures for Arctic OCS exploratory drilling. The current rulemaking focuses primarily on reasonably foreseeable Arctic OCS exploratory drilling activities that use MODUs, and on related operations during the Arctic open-water drilling season (generally late June to early November). After the proposed requirements for exploratory drilling are finalized and applied to those activities, DOI will be able to assess whether it should apply similar requirements to development drilling.

This proposed rule builds on input received from partners and stakeholders, key components of Shell's 2012 Arctic exploratory drilling program, and the additional measures BOEM and BSEE required Shell to

perform under existing regulatory authorities. After considering the input received and our direct experience from Shell's 2012 Arctic operations, BOEM and BSEE have concluded that additional exploratory drilling regulations would enhance and clarify existing regulations and would be appropriate as a part of the Arctic OCS oil and gas regulatory framework.

The proposed rule would further the Nation's interest in exploring frontier areas, such as those in the Arctic OCS region, safely and responsibly, and would establish specific operating models and requirements that account for both the extreme, changing conditions that exist on the Arctic OCS and Alaska Natives' cultural traditions and need to access subsistence resources. The proposed regulations would require comprehensive planning of operations, especially for emergency response and safety systems. The proposed rule would seek to institutionalize a proactive approach to offshore safety. A goal of the proposed rule is to identify potential vulnerabilities early in the planning process so that corrections can be made to decrease the potential of an incident occurring. The requirements in the proposed rule also are designed to ensure that those plans would be executed in a safe and environmentally protective manner despite the challenges the Arctic OCS presents.

In particular, this proposed rule would address several important objectives, including ensuring that operators:

i. Design and conduct exploration programs in a manner suitable for Arctic OCS conditions;

ii. Develop an IOP that would address all phases of their proposed Arctic OCS exploration program and submit the IOP to BOEM at least 90 days in advance of filing an EP;

iii. Have access to and the ability to promptly deploy SCCE while drilling below or working below the surface casing;

iv. Have access to a separate relief rig located so that it could timely drill a relief well, in the event of a loss of well control, under the conditions expected at the site;

v. Have the capability to predict, track, report, and respond to ice conditions and adverse weather events;

vi. Effectively manage and oversee contractors; and

vii. Develop and implement OSRPs designed and executed in a manner suitable for the unique Arctic OCS operating environment and have the necessary equipment, training, and

personnel for oil spill response on the Arctic OCS.

The following provisions of the proposed rule are expected to result in additional costs, above the baseline, to the affected industry:

- i. Additional Incident reporting requirements;
- ii. Additional pollution prevention requirements;
- iii. Additional requirements for securing wells;
- iv. Additional BOP pressure testing requirements;
- v. Real-time monitoring requirements;
- vi. Additional information requirements for APDs;
- vii. Incorporation of proposed draft API RP 2N, Third Edition;
- viii. Additional SCCE requirements;
- ix. Relief rig requirements;
- x. Additional auditing requirements;
- xi. Real-time location tracking requirements;
- xii. IOP requirements;
- xiii. Additional requirements for EPs; and
- xiv. Industry familiarization with the rule.

## 2. Alternatives

As explained in the Initial RIA, BOEM and BSEE have considered three alternatives for dealing with the safety and environmental concerns that exploratory drilling activities on the Arctic OCS have raised:

- i. Promulgate the rule changes described in this proposed rule; or
- ii. Promulgate the rule changes described in the proposed rule without including the 7-day BOP pressure testing requirement for Arctic OCS exploratory drilling operations (in § 250.447 of the proposed rule); or
- iii. Take no regulatory action and continue to rely on existing oil and gas regulations, industry standards, and operator prudence.

BSEE has decided not to issue a proposed rule without the 7-day BOP testing requirement. The additional testing requirement would help ensure that BOPs deployed in the Arctic OCS function properly and reduce the risk of blowouts. BSEE has determined that the total cost to industry of including this requirement is approximately \$135.1 million over the 10-year analysis period (with 7 percent discounting). The cost summary tables below present the total costs of the proposed rule with and without the additional BOP pressure testing requirements.

BOEM and BSEE also have decided to move forward with this proposed rule, in lieu of taking no regulatory action, because relying on the regulatory status quo would not address the safety and

environmental concerns in the Arctic region that partners and stakeholders have raised, and thus would not achieve the objectives of this proposed rule. In addition, the proposed rule would confer additional protections on the environment and Alaska Native cultural activities.

## 3. Economic Analysis

BOEM and BSEE evaluated the potential cost impacts of the proposed rule against the baseline. The analysis reflects only the activities and capital investments the proposed rule requires that represent a change from the baseline. The analysis covers 10 years (2015 through 2024) to ensure it captures important benefits and costs that could result from the proposed rule.<sup>10</sup> When summarizing the costs and benefits, we present the estimated annual effects and the 10-year discounted totals using discount rates of 3 and 7 percent, per OMB Circular A–4, “Regulatory Analysis.” BOEM and BSEE welcome comments on this analysis, including comments on the assumptions, the baseline, the methods used, and on the potential sources of data or information on the costs and potential benefits of this proposed rule.

### i. Assumptions

The baseline refers to existing regulatory requirements, industry standards, and operator prudence. According to OMB’s Circular A–4, the baseline should be “the best assessment of the way the world would look absent the proposed action.” Thus, the economic analysis excluded activities or capital investments that existing regulations require as well as impacts resulting from the incorporation of industry standards with which industry voluntarily complies. The baseline also includes only costs associated with requirements that BOEM or BSEE have previously routinely imposed in other regions under their existing regulatory authorities, but does not include the costs described as follows:

*a. Relief Rig Capital Costs:* The proposed rule requires Arctic OCS operators to have access to a separate relief rig located such that it could timely drill a relief well if a loss of well

<sup>10</sup> As explained in the Initial RIA, we used a 10-year period for this analysis because of the uncertainty associated with predicting industry’s activities and the advancement of technical capabilities. For example, the costs associated with a particular new technology may decrease as the technology is adopted more broadly over time. In other cases, an existing technology may be replaced by a lower-cost alternative. Extrapolating results beyond this 10-year time frame would produce more ambiguous results and, therefore, be disadvantageous in determining actual costs and benefits likely to result from this proposed rule.

control were to occur and drilling a relief well becomes necessary. Although a relief rig was required by DOI during Shell’s 2012 Arctic operations, and although BOEM and BSEE anticipate that we would exercise our existing authorities to require a relief rig for any future exploratory drilling on the Arctic OCS, we chose not to include the capital costs associated with staging a relief rig that may not be conducting exploratory drilling (*i.e.*, a standby rig) in the baseline.<sup>11</sup> Instead, we conservatively chose to include such costs as part of the costs of the rule, in the detailed economic analysis contained in the Initial RIA. These costs are estimated at \$276 million per year per standby rig.

Based on EPs and other information, however, BOEM and BSEE believe that, in the future operators would likely designate a second operating rig to be a relief rig (instead of staging a dedicated standby relief rig) because, over time, the increased presence of multiple operating rigs on the Arctic OCS would make it easier for one operating rig to be designated as a relief rig for another operating rig. Nonetheless, because an operator may choose to deploy a dedicated standby relief rig, the economic analysis conservatively includes the estimated costs for a standby rig for 2015 and 2016.

In addition, costs associated with documenting a relief rig plan are not included in the baseline for the analysis and are included in the economic analysis.

*b. Relief Rig Activity Costs:* The proposed rule would establish a 45-day maximum limit on the time necessary to complete the relief well operations activities. This provision effectively would require the cessation of exploratory drilling or other work below the surface casing far enough in advance of the expected return of seasonal ice to allow for completion and abandonment of a relief well. BOEM and BSEE approved plans for Shell’s 2012 Arctic operations required drilling operations in zones that can support the flow of liquid hydrocarbons in measurable quantities into the well to be concluded 38 days before November 1, based on satellite imagery showing the 5-year historical average of earliest encroachment of sea ice over the applicant’s drill site and the estimated time required to drill a relief well. Thus,

<sup>11</sup> Although Shell included a relief rig requirement in its Beaufort Sea and Chukchi Sea EPs for the 2012 season (which BOEM approved and which were subsequently incorporated in Shell’s APDs, as approved by BSEE), BOEM would have required that a relief rig be included in Shell’s EPs under the authority currently found in 30 CFR 550.213 and 550.220 in any event.

the baseline for this analysis includes this 38-day requirement from 2012. Accordingly, the potential costs of the proposed 45-day maximum timeframe include only the costs of the additional 7 days (45 days minus 38 days) not included in the baseline, during which drilling or work below the surface casing could not take place.

We recognize that the requirement to have the capability to drill a relief well to permanently kill an out-of-control well may lead to a reduction in the number of days during which operators can perform work below the surface casing during the drilling season. There will be costs and benefits associated with this requirement. Those costs (including "opportunity costs") may also include costs resulting from a reduction in the number of wells that can be drilled during the term of the lease under which the operator is conducting exploratory drilling operations.

The Initial RIA for the proposed rule discusses the challenges associated with estimating opportunity costs. Because the Arctic OCS is a frontier area for drilling operations, there are very few data points that would provide the basis for accurate estimates. Any attempt to calculate opportunity costs would have to take into account the significant number of uncertainties associated with exploratory drilling, the nature of the economic benefits sought to be achieved by such operations (*e.g.* booking reserves), and a variety of other factors. These factors will often depend upon the decisions an operator makes on how to conduct drilling operations during each drilling season and the nature of the opportunities for other productive use of the assets.

Data available to BOEM and BSEE indicate that the estimated daily operating cost of a drilling rig located in the Arctic OCS is approximately \$2 million. This estimate includes all of the costs associated with operating a rig (*e.g.*, including the costs of the rig crew). This figure is based upon an analysis of the daily costs of rigs currently operating in the Gulf of Mexico, adjusted significantly upward to account for the harsh operating conditions in the Arctic. The actual operating costs for a rig operating in the Arctic OCS will likely vary greatly from season to season. Industry data presented in the course of this rulemaking indicated that the fixed costs of drilling in the Arctic for one season are \$1.2 billion, which, amortized over an entire 100-day season

of drilling, is equivalent to \$12 million per day in sunk costs.<sup>12</sup>

Any calculation of opportunity costs should include an estimated return on investment. Such a calculation could be based on the OMB Circular A-4 estimate of the average before-tax rate of return to private capital in the U.S. economy (7 percent) or could be based on the industry stated average return on capital (10 percent).

Any calculation of opportunity costs should also estimate the number of days per season that the operator could not conduct work below the surface casing. While the proposed rule would impose a maximum period of 45-days for a relief rig to deploy and complete a relief well and, thus, a maximum of 45-days during which work below the surface casing would not occur, the actual number of days during which an operator would not be able to conduct drilling or other work below the surface casing is subject to a number of variables. As discussed previously, we estimate that it would take 20 days to prepare and transport a rig from the nearest U.S. deep water port (Dutch Harbor) to the farther well location (Beaufort leases), 20 days to drill the relief well, and five days to plug the uncontrolled well, test it, and move off the well site. Further, the actual time needed for completing a relief well operation would vary depending on a number of factors. For example, the estimated actual time needed would depend on how an operator proposes to stage a relief rig: *e.g.*, if it chooses to deploy a dedicated standby relief rig or to designate a second operating rig as a relief rig. In the latter case, a relief rig operating in the near vicinity of the primary rig, as proposed by Shell in its revised Exploration Plan for 2015,<sup>13</sup> may be able to reach the site of a blowout and complete a relief well in as little as 25 days, assuming no transit time for the rig.

Moreover, other work, which will likely have significant economic benefit, may continue under the proposed rule during the period that work below the surface casing is not allowed, providing economic benefits from other activities that could be conducted during this period (for example, in 2012, Shell drilled top holes during the period it

was not allowed to drill into hydrocarbon bearing zones). If the alternative work was of similar economic value, there would be no opportunity cost. However, it is likely the alternative work would have a lesser value than the forgone work, and thus only partially offset the opportunity cost.

The Initial RIA assumes that, during 10 years of exploratory drilling operations, primary rigs (up to four per season during 2018–2024) will conduct a total of 32 drilling campaigns. During those drilling campaigns, costs associated with each rig will be highly variable. Current estimates of these costs range from \$ 2 million to \$12 million per day. The breadth of this range, combined with the number of significant additional variables (number of days affected; rate of return), makes it difficult to estimate a range of annual opportunity costs. Additional data related to operating costs, forecasted positioning of relief rigs, the economic effect of operating two rigs in theater during the same season, and other significant variables may provide the basis for meaningful estimates of annual opportunity costs associated with the requirement that a relief rig be able to deploy and complete a relief well within 45 days of the end of the drilling season. We encourage comments on such estimated costs, as well as benefits, with supporting data, including data on the uses to which a primary rig could be put during the time it is not working below the surface casing. Any such estimates should, if appropriate, include estimated return on capital that would be forgone as a result of these requirements.

#### *c. BOP Pressure Testing*

*Requirements:* We do not include the 7-day BOP pressure-testing requirements in the baseline for the analysis because, although Shell agreed to this requirement as a condition of its 2012 operations, Shell ultimately did not conduct these BOP pressure tests during that operating season. Thus, we conservatively include the costs associated with the increased BOP pressure testing requirements in the analysis of the costs for Alternative 1.

Based on BOEM's and BSEE's knowledge of operators engaged in, or likely to be engaged in, Arctic OCS exploration activities, we also made several assumptions about the number of operators, rigs, and wells operating on the Arctic OCS over the 10-year analysis period. We based all assumptions on our experience with recent and expected industry practices for operators on the Arctic OCS, including information submitted to

<sup>12</sup> During a meeting conducted with OMB pursuant to E.O. 12866, Shell stated that its total costs for a 100-day drilling season were \$1.5 billion and that 80% of those costs (\$1.2 billion) were "sunk." Dividing these costs by 100 (the assumed length of the drilling season) yields an estimate of \$12 million per day. These costs have not been independently validated by BOEM and BSEE, and it is not known if the industry figure provided already included the expected return on capital.

<sup>13</sup> <http://www.boem.gov/EP-PUBLIC-VERSION/>.

BOEM and BSEE by lessees and operators and other available information related to planned or potential industry exploratory activities

for the analysis period. Exhibit 1 presents these assumptions. We seek comments on the reasonableness of these assumptions.

**Exhibit 1. Assumptions About the Affected Population of Operators and Drilling Operations**

Inputs	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Operators .....	1	1	1	3	3	3	3	3	3	3
Primary rigs .....	2	2	2	4	4	4	4	4	4	4
Standby relief rig <sup>1</sup> .....	1	1	0	0	0	0	0	0	0	0
Exploratory wells drilled each year .....	2	4	4	4	4	6	6	6	6	6
Applications for permit to drill .....	2	4	4	4	4	6	6	6	6	6
Exploration plans .....	1	2	2	2	2	2	2	2	2	2
Integrated operations plans .....	2	2	2	2	2	2	2	2	2	2
Oil spill response plans .....	2	2	2	2	2	2	2	2	2	2

<sup>1</sup> Standby relief rigs are rigs that are not conducting exploratory drilling and are assumed to incur different costs than relief rigs that are conducting exploratory drilling (*i.e.*, “primary rigs”).

Other data inputs and assumptions common to many of the calculations include the following:

*d. SCCE and Resource Sharing:* The proposed rule requires operators to have access to, and the ability to promptly deploy, SCCE while conducting Arctic OCS exploratory drilling or work below the surface casing. In the cost analysis, we assume that the operator conducting exploratory drilling beginning in 2015 already owns the required SCCE. We also assume that the operator with two primary rigs in 2017 will use one set of SCCE to satisfy the SCCE requirements for both of its rigs. Finally, we assume that, of the two operators entering in 2018, one will purchase the SCCE and the other will select the least-cost means to comply with the proposed rule and enter into resource sharing with an operator who has already purchased the SCCE.

Because the industry does not currently engage in resource sharing on the Arctic OCS, BOEM and BSEE have no details on how the process would be conducted and whether or to what degree, for example, an operator would charge for access to equipment. The SCCE resource-sharing assumptions represent the most likely scenario based on BSEE’s knowledge of the industry. BOEM and BSEE also considered a low-cost scenario and a high-cost scenario that vary the assumptions for resource sharing and purchase of SCCE by operators. The Initial RIA for the proposed rule discusses the costs associated with these scenarios.

*e. Daily Rig Operating Costs:* Based on BSEE estimates and cost estimation methodologies from the BOEM Case Study, we assume that rigs on the Arctic OCS have a daily operating cost of \$2 million. For the purposes of the analysis, we assume that the daily rig operating costs remain constant over the 10-year analysis period. We also assume

that the drilling season on the Arctic OCS lasts 138 days.<sup>14</sup>

*f. BSEE Burden to Review Paperwork Submissions:* For each paperwork submission, we assume that for every hour that industry devotes to compile and submit information, BSEE will need one half hour to review the submission.<sup>15</sup>

*g. Wage Rates and Loaded Wage Factors:* For this analysis, we obtained median industry wage rates from the Bureau of Labor Statistics May 2012 Occupational Employment Statistics for the industry labor categories. We also obtained wage rates for BOEM and BSEE personnel from the Office of Personnel Management 2012 General Schedule for the government labor categories. To account for employee benefits, we multiplied the hourly wage rates by appropriate loaded wage factors to generate hourly compensation rates. The Initial RIA for the proposed rule includes details on wage rates and loaded wage factors used in the analysis.

**4. Costs**

The analysis presented in the Initial RIA describes the potential costs of the proposed rule compared to the baseline. Exhibit 2, which follows, summarizes these proposed requirements and their associated costs to industry and government. Please see the Initial RIA for details on the exact assumptions and calculations.

*i. Additional Incident Reporting Requirements:* Operators would be required to provide an immediate oral report to the BSEE onsite inspector, if

<sup>14</sup> We assume a 138-day drilling season for all purposes other than the prior discussion of opportunity costs, which uses a 100-day drilling season as assumed in the industry presentation to OMB. See n.13.

<sup>15</sup> The submissions to BOEM under Part 550 of the proposed rule do not follow this standard review estimate because these submissions would require a more time-intensive review by several employees.

one is present, or to the Regional Supervisor of any sea ice movement or condition that has the potential to affect operations or trigger ice management activities, the start and termination of such activities, and any “kicks” or operational issues that are unexpected and could result in the loss of well control. Operators also would be required to submit a follow-up written report regarding any ice management activities undertaken within 24 hours, following completion of those activities.

*ii. Pollution Prevention Requirements:* Operators would be required to capture all petroleum-based mud and cuttings from operations that use petroleum-based mud. In addition, these subparagraphs clarify the Regional Supervisor’s discretionary authority to require operators to capture all water-based muds and associated cuttings from Arctic OCS exploratory drilling operations after completion of the hole for the conductor casing to prevent their discharge into the marine environment.

*iii. Additional Requirements for Securing Wells:* Operators that move a drilling rig off a well prior to completion or permanent abandonment would be required to ensure that any equipment left on, near, or in a well bore that has penetrated below the surface casing is positioned to protect the well head and prevent or minimize the likelihood of compromising the down-hole integrity of the well or well plug effectiveness. Additionally, in areas of ice scour, operators would be required to use a well cellar or an equivalent means of minimizing the risk of damage to the wellhead.

*iv. Additional BOP Pressure Testing Requirements:* Operators conducting Arctic OCS exploratory drilling operations would be required to begin testing the BOP system before midnight on the seventh day following the conclusion of the previous test. This proposed requirement would represent



an increased testing frequency (compared to the current requirement for testing every 14 days).

*v. Real-time Monitoring Requirements:* These proposed new real-time monitoring requirements for Arctic OCS exploratory drilling operations include real-time data gathering and monitoring capability for data on the BOP control system, the fluid handling systems on the rig, and the well's downhole conditions. They also include onshore data transmission, monitoring, storage, and notification and availability of data to BSEE.

*vi. Additional Information Requirements for APDs:* This provision would require operators to submit Arctic OCS-specific information with APDs for Arctic OCS exploratory drilling. This includes a detailed description of how the drilling unit, equipment, and materials will be prepared for service in Arctic OCS Conditions. Operators would be required to submit a detailed description of all operations necessary in Arctic OCS Conditions to transition the rig from being underway to commencing drilling operations and from concluding drilling operations to being underway, as well as any anticipated repair and maintenance plans for the drilling unit and equipment. Operators would also be required to submit well-specific drilling objectives, timelines, and updated contingency plans for temporary abandonment of the well. Finally, operators would be required to submit information on weather and ice forecasting capability for all phases of drilling operations.

*vii. Incorporation of Proposed Draft API RP 2N, Third Edition:* This provision would require operators to submit a detailed description of how the relevant aspects of proposed draft API RP 2N, Third Edition, "Planning, Designing, and Constructing Structures and Pipelines for Arctic Conditions," are addressed in the planning of exploratory drilling operations. API RP 2N is a voluntary consensus standard that addresses the unique Arctic conditions that affect the planning, design, and construction of systems

used in Arctic and sub-Arctic environments.

*viii. Additional SCCE Requirements:* There are several proposed SCCE requirements, including equipment, stump testing, well design change information requirements, test and exercise, records maintenance, and documentation. Because the industry does not currently engage in resource sharing on the Arctic OCS, BOEM and BSEE do not have details on how that process would be conducted and whether, for example, an operator would charge for access to equipment. The SCCE resource sharing assumptions represent the most likely scenario based on BSEE's knowledge of the industry. BSEE also considered a low cost scenario and a high cost scenario for these proposed requirements that vary the assumptions for resource sharing and purchase of SCCE by operators. See Section 4.e of the Initial RIA for details on the costs associated with these scenarios.

*ix. Relief Rig Requirements:* When conducting exploratory drilling or working below the surface casing, operators on the Arctic OCS would be required to have a relief rig, different from their primary drilling rig, staged in a location such that it can arrive on site, drill a relief well, kill and abandon the original well, and abandon the relief well prior to expected seasonal ice encroachment at the drill site, but no later than 45 days after the loss of well control. In estimating the costs of this provision, BSEE included relief rig equipment capital costs and relief rig documentation costs, but did not include potential costs of the maximum 7 additional days (above the baseline) that drilling or work below the surface casing could not take place each season as a result of the maximum 45-day timeframe. ISOBSEE lacks data on how such a limitation would affect future exploratory drilling operations. BSEE requests information on the potential costs, if any, due to the cessation of drilling or other work below the surface casing up to 7 days (beyond the baseline) earlier than would otherwise occur without the proposed relief rig requirement. Any such comments

should account for the benefits of other operations (such as maintenance and, in some cases, drilling a second top hole) that could continue on the site after drilling or work below the surface casing ceases.

*x. Additional Auditing Requirements:* This provision would increase the SEMS audit frequency and facility coverage for Arctic OCS exploratory drilling operations.

*xi. Real-time Location Tracking Requirements:* This proposed provision describes additional information requirements for the emergency-response action plan section of the OSRP for operators conducting exploratory drilling on the Arctic OCS. Operators would be required to describe how they would maintain an effective tracking and management system that is able to locate in real-time all response equipment and personnel conducting response activities, or transitioning to and from the response site(s), and to maintain a current picture of resources entering and exiting staging areas and the operational status of those resources.

*xii. IOP Requirements:* The proposed rule would require operators proposing to conduct exploratory drilling operations on the Arctic OCS to develop an IOP for each proposed exploratory drilling program on the Arctic OCS, and to submit the IOP to BOEM at least 90 days in advance of filing an EP.

*xiii. Planning Information Requirements to Accompany EPs:* This includes proposed additional information requirements for planning information that must accompany EPs for operators proposing to conduct exploration activities in the Arctic OCS Region.

*xiv. Industry Familiarization with the New Rule:* Assuming the new regulation takes effect, industry would need to read and interpret the rule. Through this review, operators would familiarize themselves with the structure of the new rule and identify any new provisions relevant to their operations. Operators also would evaluate whether they must take any new action to achieve compliance with the rule.

EXHIBIT 2—10-YEAR AVERAGE ANNUAL COSTS BY PROVISION (WITH NO DISCOUNTING)

Provision	10-year average annual costs: alternative 1 (with 7-day BOP testing requirement)	1-year average annual costs: alternative 2 (without 7-day BOP testing requirement)
a. Additional Incident Reporting Requirements .....	\$5,374	\$5,374
b. Additional Pollution Prevention Requirements .....	\$13,585	\$13,585
c. Additional Requirements for Securing Wells .....	\$24,000,000	\$24,000,000

EXHIBIT 2—10-YEAR AVERAGE ANNUAL COSTS BY PROVISION (WITH NO DISCOUNTING)—Continued

Provision	10-year average annual costs: alternative 1 (with 7-day BOP testing requirement)	1-year average annual costs: alternative 2 (without 7-day BOP testing requirement)
d. Additional BOP Pressure Testing Requirements .....	\$19,200,000	\$0
e. Real-time Monitoring Requirements .....	\$2,208,000	\$2,208,000
f. Additional Information Requirements for APDs .....	\$16,771	\$16,771
g. Incorporation of API RP 2N, Third Edition .....	\$9,240	\$9,240
h. Additional SCCE Requirements .....	\$31,471,823	\$31,471,823
i. Relief Rig Requirements .....	\$55,208,133	\$55,208,133
j. Additional Auditing Requirements .....	\$249,482	\$249,482
k. Real-time Location Tracking Requirements .....	\$121,044	\$121,044
l. IOP Requirements .....	\$125,167	\$125,167
m. Planning Information Requirements to Accompany EPs .....	\$28,702	\$28,702
n. Industry Familiarization with the New Rule .....	\$313	\$313
TOTAL .....	\$132,657,635	\$113,457,635

We also estimated the costs for Alternative 1, the proposed rule with the additional BOP pressure testing requirement, and Alternative 2, the proposed rule without the additional BOP pressure testing requirements.

Exhibit 3 summarizes the costs for both alternatives using discount rates of 3 percent and 7 percent. Alternative 1, the proposed rule, would result in economic costs of \$1.2 billion with 3-percent discounting and \$1.1 billion

with 7-percent discounting over 10 years. This estimate assumes the cost associated with staging a standby relief rig as outlined in Section VI.B.3.(i.e., *Relief Rig Capital Costs*).

EXHIBIT 3—SUMMARY OF MONETIZED COSTS<sup>1 2</sup>

Year	Industry costs: alternative 1	Industry costs: alternative 2	Government costs	Total costs: alternative 1	Total costs: alternative 2
	A	B	C	D = A + C	E = B + C
2015 .....	294,689,955	288,689,955	155,932	294,845,887	288,845,887
2016 .....	304,631,665	298,631,665	171,956	304,803,620	298,803,620
2017 .....	35,717,099	23,717,099	162,221	35,879,320	23,879,320
2018 .....	322,562,375	298,562,375	225,779	322,788,154	298,788,154
2019 .....	52,406,644	28,406,644	214,296	52,620,941	28,620,941
2020 .....	62,678,863	38,678,863	172,010	62,850,873	38,850,873
2021 .....	63,065,863	39,065,863	225,271	63,291,135	39,291,135
2022 .....	63,129,138	39,129,138	225,271	63,354,409	39,354,409
2023 .....	62,678,863	38,678,863	172,010	62,850,873	38,850,873
2024 .....	63,065,863	39,065,863	225,271	63,291,135	39,291,135
Undiscounted 10-year total .....	1,324,626,328	1,132,626,328	1,950,018	1,326,576,346	1,134,576,346
PV 10-year total with 3% discounting .....	1,221,896,314	1,057,816,579	1,701,450	1,223,597,763	1,059,518,028
PV 10-year total with 7% discounting .....	1,110,686,488	975,624,608	1,441,797	1,112,128,285	977,066,405
Annualized with 3% discounting .....	143,243,524	124,008,373	199,462	143,442,986	124,207,835
Annualized with 7% discounting .....	158,136,768	138,906,995	205,279	158,342,048	139,112,275

<sup>1</sup> Totals might not add because of rounding.

<sup>2</sup> For explanation of the 3-percent and 7-percent discounting methodology, see n. 2 in Exhibit 24 of the Initial RIA.

5. Benefits

Many of the potential benefits of the proposed rule—based primarily on preventing or reducing the duration or severity of catastrophic oil spills—are difficult to quantify. The proposed rule would benefit society and the environment by reducing the potential for an incident resulting in an oil spill and, if an incident does occur, by reducing the duration or severity of the spill. The objective of the proposed rule

is to ensure safe and responsible oil and gas drilling on the Arctic OCS resulting in increased safety for personnel; protection of the coastal, human, and marine environments and of species; and reducing potential conflicts between OCS oil and gas activities and the Alaska Natives' ability to conduct subsistence activities. The magnitude of these benefits, however, is uncertain and highly dependent on the actual reduction in the probability of incidents

and the effectiveness of stopping or containing a spill already underway.

The following break-even analysis describes the reduction in the duration of a catastrophic oil spill that would be needed to generate certain quantifiable benefits equal to or greater than the estimated costs associated with this proposed rule. In addition, because the probability and length of a catastrophic oil spill would be reduced, other benefits—beyond what we captured in

the break-even analyses—would result from the proposed rule. Due to challenges in measuring these additional benefits, we do not offer a quantitative assessment of them; instead, we present a qualitative discussion.

*i. Break-Even Analysis:* BOEM and BSEE conducted a break-even analysis of the proposed rule (Alternative 1) because of the difficulties associated with estimating the benefits of reducing the probability and consequences of a

catastrophic oil spill and the uncertainty and measurement problems associated with several categories of benefits.<sup>16</sup>

For the proposed rule, using the estimated discounted costs at 3 and 7 percent and the potential benefits (in terms of avoided costs of incidents), we calculated a break-even number of avoided days of spilled oil if a catastrophic oil spill were to occur. This estimate reflects the number of avoided days of spilled oil needed for the

proposed rule to achieve at least zero net benefits. Any avoided days of spilled oil greater than these break-even points result in the proposed rule's achieving positive net benefits, should a catastrophic spill occur (*i.e.*, it is cost-beneficial). We also show the estimated total cost of a catastrophic oil spill relative to the total cost of the proposed rule. Exhibit 4 presents the total cost of a catastrophic spill and the 10-year cost of the rule.

EXHIBIT 4—TOTAL COST OF A CATASTROPHIC OIL SPILL COMPARED TO THE 10-YEAR COST OF THE RULE

Location	Cost of a spill (\$ millions)		10-year cost of the rule (\$ millions)	
	Low	High	7% Discounting	3% Discounting
Chukchi Sea .....	\$10,074.2	\$15,752.6	\$1,112	\$1,224
Beaufort Sea .....	12,155.9	27,771.5	1,112	1,224

Quantifiable costs of a catastrophic oil spill in the Chukchi Sea range from \$10.07 billion to \$15.75 billion and in the Beaufort Sea from \$12.16 billion to \$27.77 billion. Thus, quantifiable costs of an oil spill are more than the cost of the proposed rule; however, the

probability of a catastrophic oil spill is very low. A catastrophic spill resulting from exploratory drilling on the Arctic OCS, for example, is considered unlikely due to the nature of the geology, shallow water depth, and simplicity of the wells. However, due to

the limited drilling history on the Arctic OCS, projections cannot be made with certainty. Exhibit 5 presents a summary of the results of the break-even analysis for the proposed rule; a full description of the results and methodology is contained in the Initial RIA.

EXHIBIT 5—BREAK-EVEN RESULTS: NUMBER OF DAYS OF OIL SPILL PREVENTED

Location	Cost of spill per day (\$ millions)	10-year cost of the rule (\$ millions)		Break-even number of days	
		7% Discounting	3% Discounting	7% Discounting	3% Discounting
Chukchi Sea .....	\$177.5	\$1,112	\$1,224	6.3	6.9
Beaufort Sea .....	113.6	1,112	1,224	9.8	10.8

Over the 10-year cost analysis period, the number of avoided/reduced days of a catastrophic oil spill needed to break-even is between 6.3 and 6.9 days for the Chukchi Sea and 9.8 and 10.8 days for the Beaufort Sea. To provide context, the BOEM Case Study estimates that the duration of a catastrophic incident in the Chukchi Sea could be between 40 and 75 days and an incident in the Beaufort Sea could be between 60 and 300 days. One of the key goals of the proposed SCCE and relief rig provisions is to reduce the duration of such a spill should one occur.

BOEM and BSEE believe that this break-even analysis is an appropriate way to evaluate the costs and benefits of the proposed rule under the circumstances. However, we invite comments on the assumptions, data,

and methods used in this break-even analysis, as described fully in the Initial RIA. We also invite comments on whether there is a better alternative method for evaluating the costs and benefits of the proposed rule.

*ii. Qualitative Benefits:* Because BOEM and BSEE used a conservative approach in the valuation of an oil spill in the break-even analysis, the identified cost of a catastrophic oil spill can be considered a lower bound of the true cost of such an event to society and of the potential benefits from preventing such an event. Although the break-even analysis captures some of the environmental damage associated with a catastrophic oil spill, the analysis is limited because it only considers the environmental amenities that researchers could identify and

monetize. Natural resource valuation is complex; many factors contribute to how society values a resource, including both use and non-use values of the resources. Many use values can be estimated by behavior and market transactions (for example, using the harvest value of yields in the Arctic OCS region). Many other use values, however, might not be related to a market and are, therefore, difficult to monetize. For example, Alaska Native communities place a high value on the cultural amenities related directly to the use of the region. Because communities do not trade cultural amenities in markets, we are unable to estimate a direct value of these resources.

Non-use values are much harder to estimate; common non-use values include existence values and bequest

<sup>16</sup> A catastrophic oil spill is a low-probability, high-consequence event because it is an event that occurs infrequently, but has large consequences when it does occur. For such events, it is difficult to know with any certainty the probability of the

event actually occurring, or to precisely determine the reduction in the probability of occurrence that a proposed regulation would actually achieve. In addition, the consequences of an oil spill depend on several factors, including the type and amount

of oil, the location of the spill, the areal distribution of the release, the sensitivity of the ecosystem affected, and the weather.

values. Individuals place a value on environmental amenities by knowing that preservation and protection of the region exists even if those individuals do not intend to visit the region. Bequest values relate to individuals placing a value on the preservation of regions for future generations even if they do not intend to use the resource themselves. For example, many non-native Alaskans, and many other Americans who do not live in Alaska, place a very high value on protecting the health of the ecosystem, including the sensitive environment and wildlife, of this largely frontier area. Thus, the impact of a catastrophic oil spill, would have extremely high cultural and societal costs, and prevention of such a catastrophe would have correspondingly high cultural and societal benefits. Capturing these complex values is difficult because they are not traded in markets. Because we are unable to monetize all aspects of the consequences of an oil spill, the estimate we used in the break-even analysis captures only a portion of the value to society.

The objective of the proposed rulemaking is to ensure safe and responsible oil and gas drilling on the Arctic OCS, which would result in increased safety for personnel, protection of the marine environment and species, protection of Alaska Natives' cultural values, and removal of impediments to Alaska Natives' subsistence use. In addition, the proposed rule achieves better coordination among BSEE, BOEM, and other government agencies. For example, the information required in proposed § 550.204 would facilitate interagency coordination between DOI and other relevant Federal agencies, as recommended in the 60-Day Report.

Exhibit 6 presents the provisions of the proposed rule along with their primary qualitative benefits, such as improving oversight of operations by Federal agencies, minimizing natural resource and ecosystem impacts, reducing the risk of a spill, improving containment of a spill, and a general benefit.

**EXHIBIT 6—EXAMPLES OF QUALITATIVE BENEFITS BY PROVISION**

Provision	Primary benefits
a. Additional Incident Reporting Requirements.	Improves oversight of operations by Federal agencies.
b. Pollution Prevention Requirements.	Minimizes natural resource impacts.

**EXHIBIT 6—EXAMPLES OF QUALITATIVE BENEFITS BY PROVISION—Continued**

Provision	Primary benefits
c. Additional Requirements for Securing Wells.	Reduces risk of a spill.
d. Additional BOP Pressure Testing Requirements.	Reduces risk of a spill.
e. Real-time Monitoring Requirements.	Reduces risk of a spill.
f. Additional Information Requirements for APDs.	Improves oversight of operations by Federal agencies.
g. Incorporation of API RP 2N, Third Edition.	Reduces risk of a spill.
h. Additional SCCE Requirements.	Improves containment of a spill.
i. Relief Rig Requirements.	Improves containment of a spill.
j. Additional Auditing Requirements.	Improves oversight of operations by Federal agencies.
k. Real-time Location Tracking Requirements.	Improves oversight of operations by Federal agencies.
l. IOP Requirements	Reduces risk of a spill.
m. Planning Information Requirements to Accompany EPs.	Improves oversight of operations by Federal agencies.
n. Industry Familiarization with the New Rule.	General.

**6. Conclusion**

The proposed rule would reduce both the overall risk of oil spills on the Arctic OCS and the consequences of a spill if one were to occur. We conducted a break-even analysis of the benefits of the proposed rule. In addition, we included a qualitative discussion of potential benefits of the proposed rule that could not be quantified or monetized. The break-even analysis showed that for the Chukchi Sea, a minimum reduction of 6.3 to 6.9 days for a catastrophic oil spill would result in a cost-beneficial rule over the 10-year study period. For the Beaufort Sea, we estimated that a minimum reduction of between 9.8 and 10.8 days for a catastrophic oil spill would result in a cost-beneficial rule over the 10-year study period.

In addition to the quantifiable benefits, there are significant qualitative benefits, including protection of Alaska Native communities' cultural resources and subsistence needs and other unquantifiable environmental, cultural, and societal benefits. Accordingly, BOEM and BSEE have determined that the benefits of the proposed rule justify its potential costs and that it is appropriate to proceed with this proposed rule.

*C.E.O. 13563*

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. In addition, E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. It also emphasizes that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this proposed rule in a manner consistent with these requirements. BOEM and BSEE worked closely with engineers and technical staff to ensure this rulemaking follows sound engineering principles and options through research, standards development, and interaction with industry.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to analyze the economic impact of proposed regulations when a significant economic impact on a substantial number of small entities is likely and to consider regulatory alternatives that will achieve the agency's goals while minimizing the burden on small entities. In addition, the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601note, requires agencies to produce compliance guidance for small entities if the rule has a significant economic impact. For the reasons explained in this section, BOEM and BSEE have concluded that the proposed rule is likely to have a significant economic impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis is required. This Initial Regulatory Flexibility Analysis assesses the impact of the proposed rule on small entities, as defined by the applicable Small Business Administration size standards.

**1. Description of the Reasons Why Action by the Agency Is Being Considered**

Although a comprehensive OCS oil and gas regulatory program exists, DOI engagement with partners and stakeholders reveals the need for new and revised regulatory measures for exploratory drilling by floating drilling vessels and "jackup rigs" (collectively

known as MODUs) on the Arctic OCS. The U.S. Arctic region, as recognized by the U.S. and defined in the U.S. Arctic Research and Policy Act of 1984, encompasses an extensive marine and terrestrial area; but this proposed rule focuses solely on the OCS within the Beaufort Sea and Chukchi Sea Planning Areas.

BOEM and BSEE have undertaken extensive environmental and safety reviews of potential oil and gas operations on the Arctic OCS. These reviews, along with concerns expressed by environmental organizations and Alaska Natives, reinforce the need to develop additional measures specifically tailored to the operational and environmental conditions of the Arctic OCS. After considering the input provided by various partners and stakeholders and DOI's direct experience from Shell's 2012 Arctic operations, BOEM and BSEE have concluded that additional exploratory drilling regulations would enhance and clarify existing regulations and would be appropriate for a more holistic Arctic OCS oil and gas regulatory framework.

This proposed rulemaking is intended to ensure that Arctic OCS exploratory drilling operations are conducted in a safe and responsible manner that considers the unique conditions of Arctic OCS drilling and Alaska Natives' cultural traditions and need to access subsistence resources. The Arctic region is known for its oil and gas resource potential, its vibrant ecosystems, and the Alaska Native communities. Extreme environmental conditions, geographic remoteness, and a relative lack of fixed infrastructure and existing operations characterize the region. These factors are key in considering the feasibility, practicality, and safety of conducting offshore oil and gas activities on the Arctic OCS.

This proposed rule would add to and revise existing regulations in 30 CFR parts 250, 254, and 550 for Arctic OCS oil and gas activities. The proposed rule would focus on Arctic OCS exploratory drilling activities that use MODUs and related operations during the Arctic OCS open-water drilling season. This proposed rule would address several important issues and objectives, including ensuring that operators:

- i. Design and conduct exploration programs in a manner suitable for Arctic OCS conditions;
- ii. Develop an IOP that would address all phases of the proposed Arctic OCS exploration program and submit the IOP to BOEM at least 90 days in advance of filing the EP;
- iii. Have access to and the ability to promptly deploy SCCE, while drilling

below or working below the surface casing;

iv. Have access to a separate relief rig located so that it could timely drill a relief well, in the event of a loss of well control, under the conditions expected at the site;

v. Have the capability to predict, track, report, and respond to ice conditions and adverse weather events;

vi. Effectively manage and oversee contractors; and

vii. Develop and implement OSRPs designed and executed in a manner suitable for the unique Arctic OCS operating environment and have the necessary equipment, training, and personnel for oil spill response on the Arctic OCS.

The proposed rule would further the Nation's interest in exploring frontier areas, such as those in the Arctic region, and would establish specific operating models and requirements for the extreme, changing conditions that exist on the Arctic OCS. The proposed regulations would require comprehensive planning of operations, especially for emergency response and safety systems. The proposed rule would seek to institutionalize a proactive approach to offshore safety. A goal of the proposed rule is to identify possible vulnerabilities early in the planning process so that corrections can be made to decrease the potential for an incident occurring. The requirements in the proposed rule also are designed to ensure that those plans would be executed in a safe and environmentally protective manner, despite the challenges the Arctic presents.

2. We identified the following provisions of the proposed rule as having a cost to industry:

- i. Additional incident reporting requirements;
- ii. Pollution prevention requirements;
- iii. Additional requirements for securing wells;
- iv. Additional BOP pressure testing requirements;
- v. Real-time monitoring requirements;
- vi. Additional information requirements for APDs;
- vii. Incorporation of proposed draft API RP 2N;
- viii. Additional SCCE requirements;
- ix. Relief rig requirements;
- x. Additional auditing requirements;
- xi. Real-time location tracking requirements;
- xii. IOP requirements;
- xiii. Additional requirements for EPs; and
- xiv. Industry familiarization with the rule.

3. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objectives and legal basis are described in part II, Background, of the proposed rule.

4. Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The RFA defines small entities as small businesses, small nonprofits, and small governmental jurisdictions. We have identified no small nonprofits or small government jurisdictions that the proposed rule would impact, so this analysis focuses on impacts on small businesses (hereafter referred to as "small entities"). A small entity is one that is "independently owned and operated and which is not dominant in its field of operation."<sup>17</sup> The definition of small business varies from industry to industry to capture industry size differences properly.

The proposed rule would affect operators and holders of Federal oil and gas leases that could conduct exploratory drilling on the Arctic OCS. According to BOEM's list of leaseholders on the Arctic OCS as of May 2014, 10 businesses hold leases on the Arctic OCS.<sup>18</sup> Three of these businesses are anticipated to conduct exploratory drilling on the Arctic OCS over the next 10 years, although any business holding a lease could conduct exploratory drilling on the Arctic OCS and would thus be subject to the requirements of this proposed rule.

Businesses subject to this rule fall under North American Industry Classification System codes 211111 (Crude Petroleum and Natural Gas Extraction) and 213111 (Drilling Oil and Gas Wells). For these classifications, a small business is defined as one with fewer than 500 employees. Based on this criterion, only one business currently holding a Federal oil and gas lease on the Arctic OCS is considered small. Although BOEM and BSEE do not expect a small entity to conduct exploratory drilling on the Arctic OCS during the 10-year analysis period, any business holding a lease could operate on the Arctic OCS. Using the number of businesses holding such leases as the universe subject to this rule, 10 percent (1 of 10) of the firms are considered small. Thus, the proposed rule would affect a "substantial number" of small

<sup>17</sup> See 5 U.S.C. 601.

<sup>18</sup> See [www.boem.gov/uploadedFiles/BOEM/About\\_BOEM/BOEM\\_Regions/Alaska\\_Region/Leasing\\_and\\_Plans/Leasing/Alaska\\_Lease\\_Holdings\\_by\\_Owner\\_or\\_Partial\\_Owner.pdf](http://www.boem.gov/uploadedFiles/BOEM/About_BOEM/BOEM_Regions/Alaska_Region/Leasing_and_Plans/Leasing/Alaska_Lease_Holdings_by_Owner_or_Partial_Owner.pdf).

entities, defined by BOEM and BSEE as 10 percent or more of the potentially affected entities. Thus, although we do not expect that a small entity would conduct exploratory drilling during the analysis period, to be conservative, we have conducted this RFA analysis to demonstrate the likely effects the proposed rule would have on a hypothetical small operator.

##### 5. Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

BOEM and BSEE have estimated the incremental costs for small oil and gas leaseholders that decide to engage in exploratory drilling on the Arctic OCS. This analysis reflects only costs associated with activities and capital investments required by the proposed rule that represent a change from the baseline. The baseline for this proposed rule includes existing regulations, standard industry practices, operator prudence, and assumptions based on requirements for Shell's 2012 Arctic OCS operations that were imposed by BOEM or BSEE under their existing regulatory authorities.<sup>19</sup> Cost estimates included in this analysis for the provisions of the proposed rule are those presented in detail in the Initial RIA.

##### i. Total Cost Estimates by Provision

BOEM and BSEE assessed the costs associated with the proposed regulation by estimating the cost for a hypothetical small operator. We assumed that this operator would conduct an exploratory drilling program with one rig, two wells, two APDs, and one OSRP, IOP, and EP each. For each provision, we estimated the per-rig, per-well/APD, per-OSRP, per-IOP, and per-EP cost, where applicable. Following is a summary of the unit costs using the estimates developed in the RIA.<sup>20</sup> Please refer to the Initial RIA for details on the cost estimates.

For the incident reporting activities, we estimated the per-rig cost at \$1,146, including both the costs for ice movement activity oral reports (\$313 per rig) and the costs associated with written reports (\$834 per rig). For the pollution prevention requirements, we

estimated the costs per rig to capture and transport mud and cuttings to be \$4,245. For the additional requirements for securing wells, we included both the capital costs (\$2,000,000) and the labor and operational costs (\$3,000,000) for a total per-well cost of \$5,000,000.

We assessed the costs for Alternative 1 (the proposed rule with the additional BOP pressure-testing requirements) and Alternative 2 (the proposed rule without the additional BOP pressure-testing requirements). For the additional BOP pressure-testing requirements included under Alternative 1, BSEE included the per-rig labor cost of \$6,000,000. These costs are not included in the cost estimates for Alternative 2. (See Section 6 following for details on the alternatives.) For the proposed real-time monitoring requirements, we estimated a per-rig labor cost of \$690,000. For the proposed additional information requirements for the APDs, we estimated a per-rig labor cost of \$1,491 and a per-well labor cost of \$1,305. For the proposed incorporation of draft API RP2N, Third Edition, we estimated a per-rig labor cost of \$1,918. For the enhanced auditing requirements, we estimated a per-rig labor cost of \$129,000. For the proposed real-time tracking requirements, we estimated a per-OSRP labor cost of \$401.

In addition, we included a cost of \$102,624 (\$63,274 upfront cost plus \$39,350 annual cost) per rig to account for the purchase, operation, and maintenance of an Automatic Identification System (AIS) as an example of costs to comply with the real-time tracking requirements for oil spill response resources.<sup>21</sup> For the proposed IOP requirements, we estimated a per-IOP labor cost of \$8,633. For the proposed planning information requirements to accompany the EPs, we estimated a per-EP labor cost of \$4,316. Finally, we estimated a per-operator cost of \$1,042 for the time needed for an operator to become familiar with the rule.

The proposed SCCE requirements have several different cost components for both rigs and wells. We estimated a one-time capital cost per rig of \$270,000,000 and an annual redeployment cost of \$1,200,000 per rig. For the aggregate cost of the SCCE, we varied the assumptions for purchase and redeployment costs based on whether the operator purchases the equipment or engages in resource sharing, as

discussed later. For the Regional Supervisor-initiated tests, we estimated a per-rig cost of \$500,000. For the stump tests, we assumed that the operator would use a pre-positioned capping stack (PPCS) and estimated that each PPCS stump test costs \$160,208 per well. We assumed one stump test before installation on each well and one stump test before deployment. Although the operator could instead use a dry-stored capping stack, we conservatively assumed that the operator would use a PPCS, which results in higher costs. For the proposed information requirements for the well design change, we estimated a per-well labor cost of \$959. We also estimated a per-well labor cost of \$1,174 to maintain the SCCE records and a per-well labor cost of \$5,755 for the APD documents. The total SCCE requirements sum to \$271,700,000 per rig and \$328,305 per well.<sup>22</sup>

For the proposed relief rig requirements, we included the costs associated with the proposed information documentation requirements for the relief rig. We estimated the labor cost associated with the documentation requirements for the relief rig to be \$14,591 per rig. As discussed in the Initial RIA, we do not include costs associated with the proposed 45-day maximum limit on the time necessary to complete the required relief rig activities under Section 250.472 because we lack information regarding potential costs, if any, above the baseline that might accrue from the cessation of drilling or other work below the surface casing under this proposed requirement.

We present the least-cost means to comply with the proposed rule, and thus assume that a small entity would not incur the costs of a standby relief rig and would enter into a resource sharing agreement to comply with the relief rig requirements. If, however, a small entity chooses to deploy a dedicated standby relief rig to comply with regulatory requirements, it could incur costs of approximately \$276 million per rig, per season.

Exhibit 7 presents the unit costs per provision for a small operator. These estimates include the full cost of the proposed SCCE requirements, assuming no resource sharing with another operator, and costs associated with the enhanced BOP pressure testing requirements under Alternative 1.

<sup>19</sup> See the Initial RIA for the proposed rule for details on baseline assumptions. We state all costs in 2012 constant dollars.

<sup>20</sup> Totals might not add because of rounding.

<sup>21</sup> As explained in the initial RIA, proposed § 254.80(c) does not require any specific real-time tracking system, so we used AIS as a representative system for costs analysis purposes.

<sup>22</sup> These totals are derived, respectively, as follows: (\$270,000,000 + \$1,200,000 + \$500,000) and (\$160,208 + \$160,208 + \$959 + \$1,174 + \$5,755).

EXHIBIT 7—UNIT COST OF THE PROPOSED RULE BY PROVISION (WITH NO RESOURCE SHARING)

Provision	Cost per rig	Cost per well/APD	Cost per operator (EP/IOP/OSRP)
a. Additional Incident Reporting Requirements .....	\$1,146	.....	.....
b. Pollution Prevention Requirements .....	4,245	.....	.....
c. Additional Requirements for Securing Wells .....	.....	5,000,000	.....
d. Additional BOP Pressure Testing Requirements .....	6,000,000	.....	.....
e. Real-time Monitoring Requirements .....	690,000	.....	.....
f. Additional Information Requirements for APDs .....	1,491	1,305	.....
g. Incorporation of draft API RP 2N, Third Ed. ....	1,918	.....	.....
h. Additional SCCE Requirements .....	271,700,000	328,305	.....
i. Relief Rig Requirements .....	14,591	.....	.....
j. Additional Auditing Requirements .....	129,000	.....	.....
k. Real-time Location Tracking Requirements .....	102,624	.....	401
l. IOP Requirements .....	.....	.....	8,633
m. Planning Information Requirements to Accompany Eps .....	.....	.....	4,316
n. Industry Familiarization with the New Rule .....	.....	.....	1,042
<b>Total Annual Cost Per Rig/Well/Operator <sup>1</sup> .....</b>	<b>278,645,016</b>	<b>5,329,610</b>	<b>14,393</b>

<sup>1</sup> Totals might not add because of rounding.

ii. Total Cost Burden for Small Entities

We calculated the cost to a single small operator under different alternatives and differing assumptions regarding resource sharing of the SCCE. We assumed that the SCCE purchase cost would be \$270,000,000 and the annual redeployment cost would be \$1,200,000.

We estimated the highest-cost scenario for a small operator to present the most conservative estimate possible of the potential for a significant economic impact. Under this highest-cost scenario, the small operator would need to purchase and deploy the SCCE (*i.e.*, no resource sharing) and would be subject to the additional BOP pressure-testing requirements under Alternative 1. We also estimated the costs of Alternative 2 (*i.e.*, no additional BOP pressure-testing requirements) assuming no resource sharing of SCCE. Under the lowest-cost scenario, the small operator

would employ resource sharing of SCCE and would not be subject to the additional BOP pressure-testing requirements (as in Alternative 2). We also estimated the costs of Alternative 1 assuming resource sharing of SCCE.

Next, we estimated the average annual revenue of an affected small operator. We used an annual revenue estimate of \$45.7 million for the small operator as calculated in the final RIA for BSEE's "Oil and Gas and Sulphur Operations on the Outer Continental Shelf: Oil and Gas Production Safety Systems" rulemaking (77 FR 50856, Aug. 22, 2012).<sup>23</sup> We used this estimate of average annual revenue to calculate the ratio of total costs of the proposed rule as a percentage of average annual revenue to determine if the proposed rule would result in a significant economic impact on small entities.

Exhibit 8 presents estimates of the total first-year costs to a small operator

under each scenario and the total first-year costs as a percentage of average annual revenue. Under all scenarios, the first-year costs as a percentage of revenue surpass the 1-percent threshold used to define a significant economic impact. Even under the lowest-cost scenario, assuming that the operator would engage in resource sharing of the SCCE and would not be subject to the additional BOP pressure-testing requirements (as in Alternative 2), the small operator would experience a total first-year cost equal to 29 percent of their average annual revenue. For the scenarios that assume no resource sharing of SCCE, the total first-year costs as a percentage of revenue are greater than 100 percent, indicating that the total first-year costs the small operator would experience would be greater than its total average annual revenue.<sup>24</sup>

EXHIBIT 8—FIRST-YEAR COSTS AS A PERCENTAGE OF AVERAGE ANNUAL REVENUE PER OPERATOR

Scenario	Total first-year cost	Total first-year cost as percent of revenue
	A	B = A/\$45.7 million
Alternative 1 with No Resource Sharing of SCCE .....	\$289,318,628	633
Alternative 2 with No Resource Sharing of SCCE .....	283,318,628	620
Alternative 1 with Resource Sharing of SCCE .....	19,318,628	42
Alternative 2 with Resource Sharing of SCCE .....	13,318,628	29

Exhibit 9 presents estimates of the total annual ongoing costs (the costs in

the second year and after) to a small operator under each scenario, or the

costs incurred on an annual basis after, and not including, the first-year of the

<sup>23</sup> See 77 FR 50856 (August 22, 2012). The final RIA for that rulemaking can be viewed at [www.regulations.gov/#!documentDetail;D=BSEE-2012-0002-0047](http://www.regulations.gov/#!documentDetail;D=BSEE-2012-0002-0047). The data in the source document are from the Office of Natural Resources Revenue. The data source reports the total 2009 small business revenue to be \$4,113,000,000. We

calculated the average revenue per small business by dividing the total small business revenue by the number of small businesses (\$4,113,000,000/90) to obtain an average of \$45,700,000 per operator.

<sup>24</sup> As stated earlier, BOEM and BSEE do not expect an actual small operator to conduct

exploratory drilling on the Arctic OCS during the 10-year period of this analysis, although we have prepared this analysis to be conservative (since one current Arctic OCS lessee is a small entity). Thus, this analysis considers the average annual revenue of small OCS operators.

analysis period. Exhibit 9 also presents the total annual ongoing costs as a percentage of average annual revenue. Under all scenarios, the annual ongoing costs as a percentage of revenue surpass the 1-percent threshold used to define a significant economic impact. Under Alternative 1, a small operator would experience total annual ongoing costs equal to 42 percent of their average annual revenue, and under Alternative

2, total annual ongoing costs to small operators would be equal to 29 percent of average annual revenue. Costs after the first year do not vary based on SCCE resource-sharing assumptions because we assumed that SCCE capital costs (if any) would be incurred in the first year. BOEM and BSEE conclude that the proposed rule would have a “significant economic impact” on small operators because costs are greater than 1 percent

of revenue in every year of the analysis period. Although costs are anticipated to be lower for operators after the first year, during which the operator is assumed to purchase capital equipment, annual costs are still estimated to be well above the 1-percent threshold in the subsequent years of the 10-year analysis period.

EXHIBIT 9—ANNUAL ONGOING COSTS AS A PERCENTAGE OF AVERAGE ANNUAL REVENUE PER SMALL OPERATOR

Scenario	Total annual ongoing cost	Total annual ongoing cost as percent of revenue
	A	B = A/\$45.7 million
Alternative 1 with No Resource Sharing of SCCE .....	\$19,125,311	42
Alternative 2 with No Resource Sharing of SCCE .....	13,125,311	29
Alternative 1 with Resource Sharing of SCCE .....	19,125,311	42
Alternative 2 with Resource Sharing of SCCE .....	13,125,311	29

The conclusion that the rule would have a “significant economic impact” on small operators is based on past revenue of operators and does not account for any potential increase in revenue that operators might experience if Arctic OCS exploratory drilling operations lead to production. Operators conducting exploratory drilling on the Arctic OCS that experience a significant, economically viable discovery of oil or natural gas and that proceed to the production phase could experience a significant increase in revenue. Thus, the analysis presented in this section could understate the revenue, resulting in an overstatement of the impact of the rule when expressed as the ratio of costs to annual revenue.<sup>25</sup>

6. Identification of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

The proposed rule does not conflict with any relevant Federal rules or duplicate or overlap with any Federal rules in any way that would unnecessarily add cumulative regulatory burdens on small entities without any gain in regulatory benefits.<sup>26</sup> However, BOEM and BSEE request comments identifying any

<sup>25</sup> Conversely, oil and gas exploration has inherent financial risk in that the exploration activities might not yield an economically viable discovery of oil or natural gas.

<sup>26</sup> The proposed revision to 30 CFR 250.300(b) that would prohibit the discharge of petroleum-based mud and associated cuttings may overlap with existing EPA general permits for the Beaufort and Chukchi Seas under the National Pollution Discharge Elimination System regulations (40 CFR part 122) while those permits remain in effect. However, the proposed rule would not add any regulatory burden to any small entity in that regard.

Federal rules that may duplicate, overlap, or conflict with the proposed rule.

7. Description of Significant Alternatives to the Proposed Rule

Several provisions of the proposed rule are performance based, which will enable operators to devise optimal strategies for reducing the cost burden of the proposed rule. In addition, operators might be able to reduce costs through resource sharing. BOEM and BSEE strongly encourage operators proposing exploratory drilling activities on the Arctic OCS to enter into mutual aid agreements for the sharing of vessels, relief well rigs, and other assets or services associated with responding to an oil spill or other emergency.

BOEM and BSEE have considered three major regulatory alternatives for dealing with the safety and environmental concerns raised by exploration activities on the Arctic OCS:

- i. Promulgate the rule changes proposed in this proposed rule for the Arctic OCS; or
- ii. Promulgate the rule changes described in the proposed rule without including the 7-day BOP pressure-testing requirement for Arctic OCS exploratory drilling operations (in § 250.447 of the proposed rule); or
- iii. Take no regulatory action and continue to rely on existing OCS oil and gas regulations, industry standards, and operator prudence.

BSEE has decided not to issue a proposed rule without the 7-day BOP testing requirement. Although maintaining the testing frequency at 14 days would reduce the total costs of the proposed rule, the additional testing

requirement is intended to help ensure that BOPs deployed in the Arctic OCS function properly and reduce the risk of blowouts.

BOEM and BSEE also have decided to move forward with this proposed rule, in lieu of taking no regulatory action, because relying on the regulatory status quo would not address the safety and environmental concerns partners and stakeholders have raised and thus would not achieve the objectives of this proposed rule. In addition, the proposed rule would confer additional protections on the environment and Alaska Native cultural activities. Further, the projected potential for impacts on small entities is mitigated by the fact that the agencies do not anticipate any small entity independently pursuing exploration drilling on the Arctic OCS during the 10-year analysis period.

E. Unfunded Mandates Reform Act of 1995 (UMRA)

This proposed rule would not impose an unfunded Federal mandate on State, local, or tribal governments but would, if finalized, create a Federal private sector mandate that could require expenditures exceeding \$100 million in a single year by offshore oil and gas exploration companies operating on the Arctic OCS. Accordingly, DOI has prepared written statements satisfying the applicable requirements of the UMRA, 2 U.S.C. 1501 *et seq.* Those requirements are addressed in the Initial RIA and initial RFA analyses for this proposed rule and in the proposed rule itself.

Among other things, the proposed rule, Initial RIA, and/or Initial RFA:



1. Identify the provisions of Federal law (OCSLA, CWA, and OPA) under which this rule is being proposed;

2. Include a quantitative assessment of the anticipated costs to the private sector (*i.e.*, expenditures on labor and equipment) of the proposed rule; and

3. Include qualitative and quantitative assessments of the anticipated benefits of the proposed rule.

Since all of the anticipated expenditures by the private sector analyzed in the Initial RIA and the Initial RFA analyses would be borne by the offshore oil and gas exploration industry in the Arctic region, the Initial RIA and Initial RFA analyses satisfy the UMRA requirement to estimate any disproportionate budgetary effects of the proposed rule on a particular segment of the private sector (*i.e.*, the offshore oil and gas industry).

As discussed in the Regulatory Planning and Review section of this proposed rule, and explained fully in the Initial RIA, BOEM and BSEE considered three major regulatory alternatives for dealing with the safety and environmental concerns raised by exploration activities on the Arctic OCS. BOEM and BSEE have decided to move forward with this proposed rule, in lieu of the other alternatives, because those alternatives would not as efficiently or effectively address the safety, environmental or sociocultural concerns raised by various stakeholders on the Arctic OCS or achieve the objectives of this proposed rule.

BOEM and BSEE have determined that the proposed rule would not impose any unfunded mandates or any other requirements on State, local or tribal governments; thus, the proposed rule would not have disproportionate budgetary effects on such governments. Assuming, however, that the proposed rule might result in budgetary effects on the Arctic region, BOEM and BSEE have determined that it is not practical to accurately estimate such effects. Since the proposed rule would not impose any requirements on any entities, other than companies and their contractors engaged in Arctic OCS exploration activities, any budgetary effects in that area would be at least indirect, secondary results of actions or decisions taken by regulated (or unregulated) entities, based on a variety of circumstances (such as the price of oil, each entity's overall financial health, and the prospects of success of any exploratory drilling). Because each of those factors is variable and unpredictable, it is not practical to estimate how those factors might affect an entity's future decisions, or what

indirect impacts, if any, such decisions could have on future regional budgets.

Similarly, BOEM and BSEE have determined that it is not reasonably feasible to accurately estimate the potential effects, if any, of the proposed rule on the National economy (*e.g.*, productivity, economic growth, employment, international competitiveness). The proposed rule, if finalized, would only affect exploratory drilling activities on the Arctic OCS, and any potential impact on the National economy would depend on individual business decisions made by regulated entities (*e.g.*, whether or not to hire new employees). Moreover, any such decisions would likely be either local or regional in effect and unlikely to have any significant National economic impacts.

#### *F. Takings Implication Assessment*

Under the criteria in E.O. 12630, this proposed rule would not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

#### *G. Federalism (E.O. 13132)*

Under the criteria in E.O. 13132, this proposed rule would not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

#### *H. Civil Justice Reform (E.O. 12988)*

This proposed rule complies with the requirements of E.O. 12988. Specifically, this rule:

1. Meets the criteria of § 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
2. Meets the criteria of § 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### *I. Consultation With Indian Tribes (E.O. 13175)*

Under the criteria in E.O. 13175, Consultation and Coordination with Indian Tribal Governments (dated November 6, 2000), DOI's Policy on Consultation with Indian Tribes (Secretarial Order 3317, Amendment 2, dated December 31, 2013), and the Alaska Native Corporation Consultation Policy (dated August 12, 2012), we

evaluated and determined that the subject matter of this rulemaking would have tribal implications for Alaska Natives. As described earlier, future Arctic OCS exploratory drilling activities conducted pursuant to this proposed rule could affect Alaska Natives, particularly their ability to engage in subsistence and cultural activities.

BOEM and BSEE are committed to regular and meaningful consultation and collaboration with tribes on policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of E.O. 13175, together with related orders, directives, and guidance. Therefore, BOEM and BSEE, in coordination with the Office of the Secretary of the Interior's Senior Alaska Representative, engaged in listening sessions, Government-to-Government Tribal consultations, and Government-to-ANCSA Corporations consultations to discuss the subject matter of the proposed rule and solicit input in the development of the proposed rule.

Government-to-Government consultation was held in Barrow between BOEM, BSEE, and the ICAS on June 6, 2013, to both provide background to and obtain information from ICAS leaders and council members. The following day, June 7, 2013, BOEM and BSEE met with leaders and council members of the Native Village of Barrow in a separate Government-to-Government consultation. All Alaska Native input provided during the meetings was subsequently provided to DOI in writing and has been included in the administrative record for this proposed rule.

BOEM and BSEE also held public listening sessions in South-central Alaska (Anchorage) and on the North Slope (Barrow) on June 6 and 7, 2013. The BOEM Alaska Region notified Alaska Native Tribes and ANCSA Corporations of the June 6 and 7, 2013, public listening sessions and Government-to-Government consultations through phone calls, emails, newspaper announcements, and BOEM's Web site.

A series of follow-on meetings and listening sessions were held June 17–20, 2013, in Anchorage resulting, in part, in Government-to-Government consultation between BOEM, BSEE, and the Native Village of Nuiqsut and Government-to-ANCSA Corporation consultations between BOEM, BSEE, and the NANA Regional Corporation and the Cully Corporation (ANCSA Village Corporation) from Point Lay.

Among the most frequent input DOI received through listening sessions and tribal consultation were comments relating to impacts on, and protection of, subsistence hunting and fishing areas and species, including consideration of mammal and fish migratory patterns, hunting and fishing seasons, and impacts of pollutants and equipment movements. Concerns also included the relative lack of infrastructure, such as roads, housing, and equipment, in coastal communities near proposed Arctic OCS oil and gas exploration areas, and inclusion of local Alaska Natives in monitoring and other activities. Commenters also requested that we incorporate traditional knowledge of the Arctic OCS into our decision-making for proposed regulations. We reviewed all comments received to date and have, where appropriate, crafted proposed measures to address Alaska Native concerns. DOI intends to continue consultation with affected tribes and ANCSA Corporations following publication of the proposed rule.

*J. E.O. 12898*

E.O. 12898 requires Federal agencies to make achieving environmental justice part of their mission by identifying and addressing disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S. DOI has determined that this proposed rule does not have a disproportionately high or adverse human health or environmental effect on native, minority, or low-income communities because its provisions are designed to increase environmental protection and minimize any impact of exploration drilling on subsistence hunting activities and Alaska Native community resources and infrastructure.

*K. Paperwork Reduction Act (PRA)*

This rule contains new information collection (IC) requirements for both BOEM and BSEE regulations, and a submission under the PRA is required. Therefore, an IC request for each Bureau is being submitted to OMB for review and approval under 44 U.S.C. 3501 *et seq.* The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, an IC unless it displays a currently valid OMB control number. The IC aspects affecting each Bureau are discussed separately. Instructions on how to comment follow those discussions.

**BOEM Information Collection—30 CFR Part 550**

This proposed rule adds new requirements for submitting EPs and other information before conducting oil and gas exploration drilling activities on the Arctic OCS. The title of the collection for the rulemaking is 30 CFR 550, Subpart B, Arctic OCS Activities—New. The burdens for the current planning requirements under 30 CFR 550, Subpart B, regulations are approved by OMB under Control Number 1010–0151 (190,480 hours, \$3,713,665 non-hour costs; expiration 12/31/14; current collection can be viewed at [www.reginfo.gov/public/](http://www.reginfo.gov/public/)). When final regulations become effective, the new IC burdens for this rulemaking will be consolidated into the existing collection for Subpart B.

Respondents for this rulemaking are Federal oil, gas, or sulphur lessees and/or operators on the Arctic OCS. Submissions are mandatory and generally on occasion. BOEM collects the information to ensure that planned operations will be safe; will not adversely affect the marine, coastal, or human environments; will respond to the special conditions on the Arctic OCS; and will conserve the resources of the Arctic OCS. BOEM uses the information to ensure, through advanced planning, that operators are

capable of safely operating in the unique environmental conditions of the Arctic and to make informed decisions on whether to approve EPs as submitted or whether modifications are necessary. BOEM also plans to share the preliminary information submitted in the IOP with other relevant agencies to provide them the opportunity to engage in constructive dialogue/feedback with operators, and each other, early in the process.

The proposed rule adds new requirements under § 550.204 for operators to develop an IOP for each exploratory drilling program on the Arctic OCS, and to submit it to BOEM at least 90 days in advance of filing their EP. The IOP addresses all phases of the operator’s proposed Arctic exploration drilling activities at a strategic or conceptual level, showing how operations will be designed, executed, and managed as an integrated endeavor from start to finish.

The proposed rule also revises the IC for plans submission by expanding the requirements under § 550.220 to address the specific conditions (*e.g.*, ice management procedures) associated with oil and gas activity on the Arctic OCS. The rule provisions are intended to ensure that operators on the Arctic OCS design and conduct their exploration drilling activities in a manner suitable for the area’s unique conditions.

BOEM estimates that the new requirements will add a total of 270 burden hours to the already approved burdens for plans. Because not all EPs submitted to BOEM will involve Arctic OCS exploration drilling, we are separating the Arctic-specific requirements and burdens from the national EP requirements. The burden table that follows this paragraph outlines the new and expanded requirements and burdens associated with this rulemaking. BOEM has not identified any non-hour cost burdens associated with these requirements.

**BURDEN BREAKDOWN**

Citation 30 CFR Part 550 Subpart B	Reporting & Recordkeeping Requirement	Hour burden	Average number of annual responses	Burden hours
<b>Arctic Integrated Operations Plan (IOP)</b>				
<i>New 204</i> <sup>1</sup> .....	For New Arctic OCS Exploration Activities: Submit IOP, including all required information.	90	2	180
<b>Contents of Exploration Plans (EP)</b>				
206 .....	General requirements for plans. ....	Burdens already covered under plans in 1010–0151.		0
220 .....	Submit Alaska-specific information. ....			

BURDEN BREAKDOWN—Continued

Citation 30 CFR Part 550 Subpart B	Reporting & Recordkeeping Requirement	Hour burden	Average number of annual responses	Burden hours
<i>Expanded 220</i> .....	For New Arctic OCS Exploration Activities: Submit required Arctic-specific information with EP, including confirmations.	15	2	30
<i>Expanded 220</i> .....	For Existing Arctic OCS Exploration Activities: Revise and resubmit Arctic-specific information, as required.	30	2	60
Total Burden for Proposed Rule.	.....	.....	6	270

<sup>1</sup> Industry already compiles this information internally for planning and contract oversight; therefore, the burden expected is minimal, just to prepare and submit to BOEM.

BSEE Information Collection—30 CFR Parts 250 and 254

The title of the collection of information for this rule is 30 CFR part 250, subparts A, D, S and 30 CFR part 254, Arctic Oil & Gas Exploratory Drilling Operations—New. The proposed regulations establish requirements for safe, responsible, and environmentally protective Arctic OCS oil and gas exploration, and the information is used in our efforts to protect life and the environment, conserve natural resources, and prevent waste.

Potential respondents comprise Federal OCS oil, gas, and sulphur operators and lessees on the Arctic OCS. The frequency of response varies depending upon the requirement. Responses to this collection of information are mandatory; they are submitted on occasion, annually, or as a result of situations encountered, depending upon the requirement. The IC does not include questions of a sensitive nature. BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR part 2), 30 CFR part 252, and 30 CFR 250.197, which address disclosure of data and information to be made available to the public.

As discussed earlier in the preamble, the proposed rule encompasses multiple subparts and focuses on Arctic OCS exploratory drilling activities and related operations. This proposed rule revises several existing collections under BSEE regulations. The requirements and burdens for these regulations are currently approved by OMB under 30 CFR part 250, subpart A, 1014–0022, expiration 8/3/2017 (84,391 hours, \$1,371,458 non-hour cost burdens); subpart D, 1014–0018, expiration 10/31/17 (102,512 hours); subpart S, 1014–0017, expiration 3/31/16 (651,728 hours, \$9,444,000 non-hour cost burdens); and 30 CFR part 254, 1014–0007, expiration 12/31/2015

(60,198 hours); current collections can be viewed at [www.reginfo.gov/public/](http://www.reginfo.gov/public/). When final regulations are promulgated, the new IC burdens for these subparts/parts will be incorporated into the respective collections of information for those regulations.

The following table provides a breakdown of the paperwork and non-hour cost burdens for this proposed rule. For the current requirements retained in the proposed rule, we used the OMB approved estimated hour and non-hour cost burdens, where discernible. However, there are several new requirements in the proposed rule as follows:

1. Subpart A:

In § 250.188(c), we have added immediate oral reporting of any sea ice movement/conditions, start and termination of ice management activities, or kicks or unexpected operational issues, and submission of a written report within 24 hours after completing ice management activities (+11 hours).

2. Subpart D:

In § 250.452(a) and (b), we have added real-time data gathering, monitoring, and storing related to the BOP control system, fluid handling, and downhole conditions, etc.; notify BSEE of location of data; make data available to BSEE upon request (+288 hours).

In § 250.470, we have added information requirements including, but not limited to, detailed descriptions of: Environmental, meteorologic, and oceanic conditions expected at well site(s), and, how drilling units and equipment will be prepared for service; transitioning rig from being underway to drilling and vice versa, along with anticipated repair and maintenance plans; specific drilling objectives, timelines, and updated contingency plans for temporary abandonment; weather and ice forecasting and management; compliance with relief well rig requirements; SCCE capabilities, including, but not limited

to, submit equipment statement showing capable of controlling WCD, explanation of your or your contractor's SCCE capabilities; inventory of supplies and services, along with relevant supplier information; proof of contracts or membership agreements to provide SCCE or supplies, services; description of procedures for inspecting, testing, and maintaining SCCE; how all personnel operating SCCE received training to deploy and operate—including dates of prior and planned training; and how the operator incorporated API RP 2N, Third Edition, into its planned drilling operations (+324 hours).

In § 250.471(c), (e), and (f), we propose to add requirements that operators: Submit a reevaluation of SCCE capabilities, including any new WCD rate, and demonstrate compliance with proposed § 250.470(f); maintain all SCCE inspection and maintenance records for at least 10 years; make records available to BSEE upon request; maintain all records relating to use of SCCE during testing, training, and deployment activities for at least 3 years; and make records available to BSEE upon request (+100 hours).

In § 250.472(c), we propose to add a provision stating that operators may request approval for alternative compliance measures for relief rig requirements in accordance with existing § 250.141 (+0 hours).

3. Subpart S:

In § 250.1920(b), (c), (d), and (e), the additional non-hour cost burdens pertaining to Audit Service Provider (ASP) audits every year in the Arctic in which exploration drilling is conducted would apply (+\$129,000 non-hour cost).

4. 30 CFR part 254:

Operators currently submit information with their spill response plans (§§ 254.20–29) that is related to the requirements in this rulemaking under proposed §§ 254.70, 254.80, and 254.90; therefore, we believe that the current burden sufficiently covers the

proposed modifications. We have added used to maintain real time monitoring a new requirement in § 254.80(c) for (+12 hours). submitting a description of the system

BURDEN TABLE

Citation 30 CFR parts 250 and 254	Reporting and recordkeeping requirements	Hour burden	Average number of annual responses	Annual burden hours
<b>30 CFR Part 250, Subpart A</b>				
188(c); 190 .....	NEW—Provide BSEE immediate oral report of sea ice movement/conditions; start and termination of ice management activities; kicks or unexpected operational issues.	Oral 1.5 .....	2 notifications .....	3.
188(c); 190 .....	NEW—Submit a written report within 24 hours after completing ice management activities.	Written 4 .....	2 reports .....	8.
Subtotal .....	.....	.....	4 responses .....	11 hours.
<b>30 CFR Part 250, Subpart D</b>				
418 .....	Additional information that is to be submitted with an APD is covered under the specific requirement listed in this burden table under 30 CFR 250.470.			0.
452(a), (b) .....	NEW—Immediately transmit real-time data gathering and monitoring to record, store, and transmit data relating to the BOP control system, fluid handling, downhole conditions; prior to well operations, notify BSEE of monitoring location and make data available to BSEE upon request.	12 .....	1 transmittal .....	12.
452(b) .....	NEW—Store and monitor all information relating to §250.452(a); make data available to BSEE upon request.	1 .....	2 wells × 138 drilling days = 276.	276.
452(b) .....	Store and retain all monitoring records per requirements of §§250.466 and 467.	Burden covered under 30 CFR 250, Subpart D, 1014–0018.		0.
470(a); 417; 418 .....	NEW—Submit detailed descriptions of environmental, meteorologic, and oceanic conditions expected at well site(s); how drilling unit, equipment, and materials will be prepared for service; how the drilling unit will be in compliance with §250.417.	10 .....	1 submittal .....	10.
470(b); 418 .....	NEW—Submit detailed description of transitioning rig from being underway to drilling and vice versa.	4 .....	2 each well—underway to drilling; drilling to underway = 4.	16.
470(b); 418 .....	NEW—Submit detailed description of any anticipated repair and maintenance plans for the drilling unit and equipment.	2 .....	2 submittals .....	4.
470(c); 418 .....	NEW—Submit well specific drilling objectives, timelines, and updated contingency plans etc., for temporary abandonment.	4 .....	2 submittals .....	8.
470(d); 418 .....	NEW—Submit detailed description concerning weather and ice forecasting for all phases; including how to ensure continuous awareness of weather/ice hazards at/between each well site; plans for managing ice hazards and responding to weather events; verification of capabilities.	6 .....	1 submittal .....	6.
470(e); 418; 472 .....	NEW—Submit a detailed description of compliance with relief rig plans.	140 .....	1 explanation .....	140.

BURDEN TABLE—Continued

Citation 30 CFR parts 250 and 254	Reporting and recordkeeping requirements	Hour burden	Average number of annual responses	Annual burden hours
470(f); 471(c); 418 .....	NEW—SCCE capabilities; submit equipment statement showing capable of controlling WCD; detailed description of your or your contractor's SCCE capabilities including operating assumptions and limitations; inventory of local and regional supplies and services, along with supplier relevant information; proof of contract or agreements for providing SCCE or supplies, services; detailed description of procedures for inspecting, testing, and maintaining SCCE; and detailed description of your plan ensuring all members of the team operating SCCE have received training to deploy and operate, include dates of prior and planned training.	60 .....	2 submittals .....	120.
470(g); 418 .....	NEW—Submit a detailed description of utilizing best practices of API RP 2N during operations.	20 .....	1 submittal .....	20.
471(c); 470(f); 465(a) .....	NEW—Submit with your APM, a reevaluation of your SCCE capabilities if well design changes; include any new WCD rate and demonstrate that your SCCE capabilities will comply with § 250.470(f).	10 .....	2 submittals .....	20.
471(e) .....	NEW—Maintain all SCCE testing, inspection, and maintenance records for at least 10 years; make available to BSEE upon request.	20 .....	2 records .....	40.
471(f) .....	NEW—Maintain all records pertaining to use of SCCE during testing, training, and deployment activities for at least 3 years; make available to BSEE upon request.	20 .....	2 records .....	40.
472(c) .....	Request approval for alternative compliance for relief rig requirements.	Burden covered under 30 CFR 250, Subpart A, 1014–0022		0.
Subtotal .....	.....	.....	297 responses .....	712 hours

30 CFR Part 250, Subpart S

1920(b), (c), (e) .....	ASP audit for High Activity Operator ..... NOTE: An audit once every 3 years in POCSR and GOMR; an audit in the Arctic in every year in which drilling is conducted.	1 operator × \$129,000 audit for high activity = \$129,000.		
1920(c) .....	Submit to BSEE after completed audit, an audit report of findings and conclusions, including deficiencies and required supporting information/documentation.	Burden covered under 30 CFR 250, Subpart S, 1014–0017.		0
1920(d) .....	Submit/resubmit a copy of your CAP that will address deficiencies identified in audit.	.		
Subtotal .....	.....	.....	1 response .....	0
				\$129,000 Non Hour Cost Burdens.

30 CFR Part 254, Subpart E

55; 70; 80; 90 .....	Submit spill response plan for OCS facilities with all information required in regulations and related documents.	Burden covered under 30 CFR 254, 1014–0007.		
80(c) .....	NEW—Submit a description of system used to maintain real-time location tracking for all response resources.	6 .....	2 descriptions .....	12.
90(a) .....	Include in your training and exercise activities the requirements of this section.	Burden covered under 30 CFR 254, 1014–0007.		

BURDEN TABLE—Continued

Citation 30 CFR parts 250 and 254	Reporting and recordkeeping requirements	Hour burden	Average number of annual responses	Annual burden hours
90(b) .....	Notify BSEE 60 days prior to handling, storing, or transporting oil.			
Subtotal .....	.....	.....	2 responses .....	12 hours.
Total Hour Burden ...	.....	.....	304 Responses .....	735 Hours.
			\$129,000 Non-Hour Cost Burdens.	

Note: For FY 2015, we calculated the burden with 2 rigs (same operator), each rig drilling 1 well.

**Commenting on Information Collections**

As part of our continuing effort to reduce paperwork and respondent burdens, BOEM and BSEE invite the public to comment on any aspect of the reporting and recordkeeping burdens. If you wish to comment on the IC aspects of these regulations, you may send your comments directly to by email to OMB (*OIRA\_submission@omb.eop.gov*) or by fax 202-395-5806, with a copy to BSEE (see Addresses section). Please identify your comments with RIN: 1082-AA01. To see a copy of either IC request submitted to OMB, go to *www.reginfo.gov* (select Information Collection Review, Currently Under Review). You may obtain a copy of the supporting statement for the new IC by contacting each Bureau's Information Collection Clearance Officer: Cheryl Blundon, BSEE, (703) 787-1607, and Arlene Bajusz, BOEM, (703) 787-1025.

The OMB is required to make a decision concerning the ICs contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**.

Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by March 26, 2015.

BOEM and BSEE specifically solicit comments on the following questions:

1. Is the proposed collection of information necessary for the Bureaus to properly perform their functions, and will it be useful?
2. Are the estimates of the burden hours of the proposed collection reasonable?
3. Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?
4. Is there a way to minimize the IC burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information. BSEE has identified one non-hour cost burden in the BSEE

Burden Table. We solicit your comments on any non-hour costs. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) Total capital and startup cost component and (2) annual operation, maintenance, and purchase of services component.

Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased: (1) Before October 1, 1995; (2) to comply with requirements not associated with the IC; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

*L. National Environmental Policy Act of 1969 (NEPA)*

BOEM and BSEE developed a draft Environmental Assessment (EA) to determine whether this proposed rule would have a significant impact on the quality of the human environment under the NEPA. The draft EA is available for review and public comment in conjunction with this proposed rule at *www.regulations.gov* (in the Search box, enter BSEE-2013-0011).

*M. Data Quality Act*

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554, app. C § 515, 114 Stat. 2763, 2763A-153-154).

*N. Effects on the Nation's Energy Supply (E.O. 13211)*

Although this proposed rule is a significant regulatory action under E.O. 12866, it is not a significant energy action under the definition of that term in E.O. 13211 because:

1. It is not likely to have a significant adverse effect on the supply, distribution or use of energy; and

2. It has not been designated as a significant energy action by the Administrator of OIRA.

Thus, a Statement of Energy Effects is not required.

Due to the inherent practical difficulties of exploration and production in the area, to date there has been relatively little exploration activity, and very little production of oil and gas, on the Arctic OCS. The only existing oil production from the Arctic OCS is through the Northstar Island facility. Since the proposed rule does not apply to development or production activities, it would not reduce or inhibit production of oil and gas and would have no adverse impact on oil and gas supplies or prices.

*O. Clarity of this Regulation*

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

1. Be logically organized;
2. Use the active voice to address readers directly;
3. Use clear language rather than jargon;
4. Be divided into short sections and sentences; and
5. Use lists and tables wherever possible.

If you believe we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, or the sections where you believe lists or tables would be useful.

*P. Public Availability of Comments*

BOEM and BSEE encourage you to participate in this proposed rule by submitting written comments as discussed in the **ADDRESSES** and **DATES** sections of this proposed rule. Before

including your address, phone number, email address or other personal identifying information in your comment on this proposed rule, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**List of Subjects**

*30 CFR Part 250*

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

*30 CFR Part 254*

Continental shelf, Intergovernmental relations, Oil and gas exploration, Oil pollution, Pipelines, Public lands—mineral resources, Reporting and recordkeeping requirements.

*30 CFR Part 550*

Administrative practice and procedure, Environmental impact statements, Environmental protection, Federal lands, Government contracts, Oil, Oil and gas exploration, Oil and gas development, Outer continental shelf, Penalties, Pipelines, Public lands—mineral resources, Public lands—right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Energy, Oil and gas reserves, Natural gas, Natural resources, Continental shelf, Offshore structures, Petroleum, Bonds, Surety bonds.

Dated: February 18, 2015.

**Janice M. Schneider,**

*Assistant Secretary, Land and Minerals Management.*

For the reasons stated in the preamble, BOEM and BSEE amend 30 CFR parts 250, 254, and 550 as follows:

**TITLE 30—MINERAL RESOURCES**

**CHAPTER II—BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT, DEPARTMENT OF THE INTERIOR**

**PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF**

■ 1. The authority citation for 30 CFR part 250 is revised to read as follows:

**Authority:** 30 U.S.C. 1751, 31 U.S.C. 9701, 33 U.S.C. 1321(j)(1)(C), 43 U.S.C. 1334.

■ 2. Amend § 250.105 by:

■ a. Revising the definition of “District Manager” and

■ b. Adding new definitions for “Arctic OCS”, “Arctic OCS conditions”, “Cap and flow system”, “Capping stack”, “Containment dome” and “Source control and containment equipment (SCCE)” in alphabetical order, to read as follows:

**§ 250.105 Definitions.**

\* \* \* \* \*

*Arctic OCS* means the Beaufort Sea and Chukchi Sea Planning Areas, as described in the Proposed Final OCS Oil and Gas Leasing Program for 2012–2017 (June 2012).

*Arctic OCS conditions* means, for the purposes of this part, the conditions operators can reasonably expect during operations on the Arctic OCS. Such conditions, depending on the time of year, include, but are not limited to: Extreme cold, freezing spray, snow, extended periods of low light, strong winds, dense fog, sea ice, strong currents, and dangerous sea states. Remote location, relative lack of infrastructure, and the existence of subsistence hunting and fishing areas are also characteristic of the Arctic region.

\* \* \* \* \*

*Cap and flow system* means an integrated suite of equipment and vessels, including a capping stack and associated flow lines, that, when installed or positioned, is used to control the flow of fluids escaping from the well by conveying the fluids to the surface to a vessel or facility equipped to process the flow of oil, gas, and water. A cap and flow system is a high pressure system that includes the capping stack and piping necessary to convey the flowing fluids through the choke manifold to the surface equipment.

*Capping stack* means a mechanical device that can be installed on top of a subsea or surface wellhead or blowout preventer to stop the uncontrolled flow of fluids into the environment.

\* \* \* \* \*

*Containment dome* means a non-pressurized container that can be used to collect fluids escaping from the well or equipment below the sea surface or from seeps by suspending the device over the discharge or seep location. The containment dome includes all of the

equipment necessary to capture and convey fluids to the surface.

\* \* \* \* \*

*District manager* means the BSEE officer with authority and responsibility for operations or other designated program functions for a district within a BSEE Region. For activities on the Alaska OCS, any reference in this part to District Manager means the BSEE Regional Supervisor.

\* \* \* \* \*

*Source control and containment equipment (SCCE)* means the capping stack, cap and flow system, containment dome, and/or other subsea and surface devices, equipment, and vessels whose collective purpose is to control a spill source and stop the flow of fluids into the environment or to contain fluids escaping into the environment. “Surface devices” refers to equipment mounted or staged on a barge, vessel, or facility to separate, treat, store and/or dispose of fluids conveyed to the surface by the cap and flow system or the containment dome. “Subsea devices” includes, but is not limited to, remotely operated vehicles, anchors, buoyancy equipment, connectors, cameras, controls and other subsea equipment necessary to facilitate the deployment, operation and retrieval of the SCCE. The SCCE does not include a blowout preventer.

\* \* \* \* \*

■ 3. Amend § 250.188 by adding a new paragraph (c) to read as follows:

**§ 250.188 What incidents must I report to BSEE and when must I report them?**

\* \* \* \* \*

(c) On the Arctic OCS, in addition to the requirements of paragraphs (a) and (b) of this section, you must provide to the BSEE inspector on location, if one is present, or to the Regional Supervisor both of the following:

(1) An immediate oral report if any of the following occur:

(i) Any sea ice movement or condition that has the potential to affect your operation or trigger ice management activities;

(ii) The start and termination of ice management activities; or

(iii) Any “kicks” or operational issues that are unexpected and could result in the loss of well control.

(2) Within 24 hours after completing ice management activities, a written report of such activities that conforms to the content requirements in § 250.190.

■ 4. Amend § 250.198 by adding paragraph (h)(89) to read as follows:

**§ 250.198 Documents incorporated by reference.**

\* \* \* \* \*

(h) \* \* \*

(89) API RP 2N, Third Edition, "Recommended Practice for Planning, Designing, and Constructing Structures and Pipelines for Arctic Conditions;" incorporated by reference at § 250.470(g);

\* \* \* \* \*

■ 5. Amend § 250.300 by revising paragraphs (b)(1) and (b)(2) to read as follows:

**§ 250.300 Pollution prevention.**

\* \* \* \* \*

(b)(1) The District Manager may restrict the rate of drilling fluid discharges or prescribe alternative discharge methods. The District Manager may also restrict the use of components which could cause unreasonable degradation to the marine environment. No petroleum-based substances, including diesel fuel, may be added to the drilling mud system without prior approval of the District Manager. For Arctic OCS exploratory drilling, you must capture all petroleum-based mud to prevent its discharge into the marine environment. The Regional Supervisor may also require you to capture, during your Arctic OCS exploratory drilling operations, all water-based mud from operations after completion of the hole for the conductor casing to prevent its discharge into the marine environment, based on various factors including, but not limited to:

(i) The proximity of your exploratory drilling operation to subsistence hunting and fishing locations;

(ii) The extent to which discharged mud may cause marine mammals to alter their migratory patterns in a manner that impedes subsistence users' access to, or use of, those resources, or increases the risk of injury to subsistence users; or

(iii) The extent to which discharged mud may adversely affect marine mammals, fish, or their habitat.

(2) Approval of the method of disposal of drill cuttings, sand, and other well solids shall be obtained from the District Manager. For Arctic OCS exploratory drilling, you must capture all cuttings from operations that utilize petroleum-based mud to prevent their discharge into the marine environment. The Regional Supervisor may also require you to capture, during your Arctic OCS exploratory drilling operations, all cuttings from operations that utilize water-based mud after completion of the hole for the conductor casing to prevent their discharge into the marine environment, based on various factors including, but not limited to:

(i) The proximity of your exploratory drilling operation to subsistence hunting and fishing locations;

(ii) The extent to which discharged cuttings may cause marine mammals to alter their migratory patterns in a manner that impedes subsistence users' access to, or use of, those resources, or increases the risk of injury to subsistence users; or

(iii) The extent to which discharged cuttings may adversely affect marine mammals, fish, or their habitat.

\* \* \* \* \*

■ 6. Amend § 250.402 by adding a new paragraph (c) to read as follows:

**§ 250.402 When and how must I secure a well?**

\* \* \* \* \*

(c) For Arctic OCS exploratory drilling operations, in addition to the requirements of paragraphs (a) and (b) of this section:

(1) If you move your drilling rig off a well prior to completion or permanent abandonment, you must ensure that any equipment left on, near, or in a well bore that has penetrated below the surface casing is positioned in a manner to:

- (i) Protect the well head; and
- (ii) Prevent or minimize the likelihood of compromising the downhole integrity of the well or the effectiveness of the well plugs.

(2) In areas of ice scour, you must use a well mudline cellar or an equivalent means of minimizing the risk of damage to the well head.

■ 7. Amend § 250.418 by adding a new paragraph (k) to read as follows:

**§ 250.418 What additional information must I submit with my APD?**

\* \* \* \* \*

(k) For Arctic OCS exploratory drilling operations, you must provide the information required by § 250.470.

■ 8. Amend § 250.447 by revising paragraph (b) to read as follows:

**§ 250.447 When must I pressure test the BOP system?**

\* \* \* \* \*

(b) Before 14 days have elapsed since your last BOP pressure test, or for Arctic OCS exploratory drilling operations before 7 days have elapsed since your last BOP pressure test. You must begin to test your BOP system before midnight on the 14th day (or for Arctic OCS exploratory drilling operations, the 7th day) following the conclusion of the previous test. However, the District Manager may require more frequent testing if conditions or BOP performance warrant; and

\* \* \* \* \*

■ 9. Add new § 250.452 to read as follows:

**§ 250.452 What are the real-time monitoring requirements for Arctic OCS exploratory drilling operations?**

(a) When conducting exploratory drilling operations on the Arctic OCS, you must have real-time data gathering and monitoring capability to record, store, and transmit data regarding all aspects of:

- (1) The BOP control system;
- (2) The well's fluid handling systems on the rig; and
- (3) The well's downhole conditions as monitored by a downhole sensing system, when such a system is installed.

(b) During well operations, you must immediately transmit the data identified in paragraph (a) of this section to a designated onshore location where it must be stored and monitored by qualified personnel who have the capability for continuous contact with rig personnel and who have the authority, in consultation with rig personnel, to initiate any necessary action in response to abnormal data or events. Prior to well operations, you must notify BSEE where the data will be monitored during those operations, and you must make the data available to BSEE, including in real time, upon request. After well operations, you must store the data at a designated location for recordkeeping purposes as required in §§ 250.466 and 250.467.

■ 10. Add new undesignated centered heading "ADDITIONAL ARCTIC OCS REQUIREMENTS" and §§ 250.470 through 250.473 in Subpart D to read as follows:

**Additional Arctic OCS Requirements**

**§ 250.470 What additional information must I submit with my APD for Arctic OCS exploratory drilling operations?**

In addition to all other applicable requirements included in this part, you must provide with your APD all of the following information pertaining to your proposed Arctic OCS exploratory drilling:

- (a) A detailed description of:
  - (1) The environmental, and meteorologic and oceanic conditions you expect to encounter at the well site(s);
  - (2) How your equipment, materials, and drilling unit will be prepared for service in the conditions in paragraph (a)(1) of this section, and how your drilling unit will be in compliance with the requirements of § 250.417.

(b) A detailed description of all operations necessary in Arctic OCS Conditions to transition the rig from being under way to conducting drilling



operations and from ending drilling operations to being under way, as well as any anticipated repair and maintenance plans for the drilling unit and equipment. The description should include, but not be limited to:

(1) Recovering the subsea equipment, including the marine riser and the lower marine riser package;

(2) Recovering the BOP;

(3) Recovering the auxiliary sub-sea controls and template;

(4) Laying down the drill pipe and securing the drill pipe and marine riser;

(5) Securing the drilling equipment;

(6) Transferring the fluids for transport or disposal;

(7) Securing ancillary equipment like the draw works and lines;

(8) Refueling or transferring fuel;

(9) Offloading waste;

(10) Recovering the ROVs;

(11) Picking up the oil spill prevention booms and equipment; and

(12) Offloading the drilling crew.

(c) Well-specific drilling objectives, timelines, and updated contingency plans for temporary abandonment of the well, including but not limited to the following:

(1) When you will spud the particular well (*i.e.*, begin drilling operations at the well site) identified in the APD;

(2) How long you will take to drill the well;

(3) Anticipated depths and geologic targets, with timelines;

(4) When you expect to set and cement each string of casing;

(5) When and how you would log the well;

(6) Your plans to test the well;

(7) When and how you intend to abandon the well, including specifically addressing your plans for how to move the rig off location and how you will meet the requirements of § 250.402(c);

(8) A description of what equipment and vessels will be involved in the process of temporarily abandoning the well due to ice; and

(9) An explanation of how these elements will be integrated into your overall program.

(d) A detailed description of your weather and ice forecasting capability for all phases of the drilling operation, including:

(1) How you will ensure continuous awareness of potential weather and ice hazards at, and during transition between, wells;

(2) Your plans for managing ice hazards and responding to weather events; and

(3) Verification that you have the capabilities described in your BOEM-approved EP.

(e) A detailed description of how you will comply with the requirements of § 250.472.

(f) A statement that you own, or have a contract with a provider for, source control and containment equipment (SCCE) that is capable of controlling and/or containing a worst case discharge, as described in your BOEM-approved EP, when proposing to use a MODU to conduct exploratory drilling operations on the Arctic OCS. The following information must be included in your SCCE submittal:

(1) A detailed description of your or your contractor's SCCE capabilities, including operating assumptions and limitations, reflecting that you have access to, and the ability to deploy in accordance with § 250.471, all SCCE necessary to regain control of the well, including the ability to evaluate the performance of the well design to determine how a full shut-in can be achieved without having reservoir fluids discharged into the environment;

(2) An inventory of the local and regional SCCE, supplies, and services that you own or for which you have a contract with a provider. You must identify each supplier of such equipment and services and provide their locations and telephone numbers;

(3) Where applicable, proof of contracts or membership agreements with cooperatives, service providers, or other contractors that will provide you with the necessary SCCE or related supplies and services if you do not possess them. The contract or membership agreement must include provisions for ensuring the availability of the personnel and/or equipment on a 24-hour per day basis while you are drilling below or working below the surface casing;

(4) A detailed description of the procedures for inspecting, testing, and maintaining your SCCE; and

(5) A detailed description of your plan to ensure that all members of your operating team who are responsible for operating the SCCE have received the necessary training to deploy and operate such equipment in Arctic OCS Conditions and demonstrate ongoing proficiency in source control operations. You must also identify and include the dates of prior and planned training.

(g) Where it does not conflict with other requirements of this subpart, and except as provided below, you must comply with the requirements of API RP 2N, Third Edition "Planning, Designing, and Constructing Structures and Pipelines for Arctic Conditions" (incorporated by reference as specified in § 250.198), and provide a detailed description of how you will utilize the

best practices included in API RP 2N during your exploratory drilling operations. You are not required to incorporate the following sections of API RP 2N into your drilling operations:

(1) Sections 6.6.3 through 6.6.4;

(2) The foundation recommendations in Section 8.4;

(3) Section 9.6;

(4) The recommendations for permanently moored systems in Section 9.7;

(5) The recommendations for pile foundations in Section 9.10;

(6) Section 12;

(7) Section 13.2.1;

(8) Sections 13.8.1.1, 13.8.2.1, 13.8.2.2, 13.8.2.4 through 13.8.2.7;

(9) Sections 13.9.1, 13.9.2, 13.9.4 through 13.9.8;

(10) Sections 14 through 16; and

(11) Section 18.

**§ 250.471 What are the requirements for Arctic OCS source control and containment?**

You must meet the following requirements for all exploration wells drilled on the Arctic OCS:

(a) If you use a MODU when drilling below or working below the surface casing, you must have access to:

(1) A capping stack, positioned to ensure that it will arrive at the well location within 24 hours after a loss of well control and can be deployed as directed by the Regional Supervisor pursuant to paragraph (h) of this section;

(2) A cap and flow system, positioned to ensure that it will arrive at the well location within 7 days after a loss of well control and can be deployed as directed by the Regional Supervisor pursuant to paragraph (h) of this section. The cap and flow system must be designed to capture at least the amount of hydrocarbons equivalent to the calculated worst case discharge rate referenced in your BOEM-approved EP; and

(3) A containment dome, positioned to ensure that it will arrive at the well location within 7 days after a loss of well control and can be deployed as directed by the Regional Supervisor pursuant to paragraph (g) of this section. The containment dome must have the capacity to pump fluids without relying on buoyancy.

(b) You must conduct a monthly stump test of dry-stored capping stacks. If you use a pre-positioned capping stack, you must conduct a stump test prior to each installation on each well.

(c) As required by § 250.465(a), if you propose to change your well design, you must submit an APM. For Arctic OCS operations, your APM must include a

reevaluation of your SCCE capabilities for any new WCD rate, and a demonstration that your SCCE capabilities will meet the criteria in § 250.470(f) under the changed well design.

(d) You must conduct tests or exercises of your SCCE, including deployment of your SCCE, when directed by the Regional Supervisor.

(e) You must maintain records pertaining to testing, inspection, and maintenance of your SCCE for at least 10 years and make the records available to any authorized BSEE representative upon request.

(f) You must maintain records pertaining to the use of your SCCE during testing, training, and deployment activities for at least 3 years and make the records available to any authorized BSEE representative upon request.

(g) Upon a loss of well control, you must initiate transit of all SCCE identified in paragraph (a) of this section to the well.

(h) You must deploy and use SCCE when directed by the Regional Supervisor.

**§ 250.472 What are the relief rig requirements for the Arctic OCS?**

(a) In the event of a loss of well control, the Regional Supervisor may direct you to drill a relief well using the relief rig described in your APD. Your relief rig must comply with all other requirements of this part for drilling operations, and it must be able to drill a relief well under anticipated Arctic OCS Conditions.

(b) When you are drilling below or working below the surface casing during Arctic OCS exploratory drilling operations, you must have access to a relief rig, different from your primary drilling rig, staged in a location such that it can arrive on site, drill a relief well, kill and abandon the original well, and abandon the relief well prior to expected seasonal ice encroachment at the drill site, but no later than 45 days after the loss of well control.

(c) Operators may request approval of alternative compliance measures to the relief rig requirement in accordance with § 250.141.

**§ 250.473 What must I do to protect health, safety, property, and the environment while operating on the Arctic OCS?**

In addition to the requirements set forth in § 250.107, when conducting exploratory drilling operations on the Arctic OCS, you must protect health, safety, property, and the environment by using the following:

(a) Equipment and materials that are rated or de-rated for service under

conditions that can be reasonably expected during your operations; and

(b) Measures to address human factors associated with weather conditions that can be reasonably expected during your operations including, but not limited to, provision of proper attire and equipment, construction of protected work spaces, and management of shifts.

■ 11. Amend § 250.1920 by:

■ a. Adding a new last sentence to paragraphs (b)(5), (c), and (d); and

■ b. Adding new paragraphs (e) and (f) to read as follows:

**§ 250.1920 What are the auditing requirements for my SEMS program?**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \* For exploratory drilling operations taking place on the Arctic OCS, you must conduct an audit, consisting of an onshore portion and an offshore portion, including all related infrastructure, once per year for every year in which drilling is conducted.

\* \* \* \* \*

(c) \* \* \* For exploratory drilling operations taking place on the Arctic OCS, you must submit an audit report of the audit findings, observations, deficiencies and conclusions for the onshore portion of your audit no later than March 1 in any year in which you plan to drill, and for the offshore portion of your audit, within 30 days of the close of the audit.

(d) \* \* \* For exploratory drilling operations taking place on the Arctic OCS, you must provide BSEE with a copy of your CAP for addressing deficiencies or nonconformities identified in the onshore portion of the audit no later than March 1 in any year in which you plan to drill, and for the offshore portion of your audit, within 30 days of the close of the audit.

(e) For exploratory drilling operations taking place on the Arctic OCS, during the offshore portion of each audit, 100 percent of the facilities operated must be audited while drilling activities are underway. The offshore portion of the audit for each facility must be started and closed within 30 days after the first spudding of the well or entry into an existing wellbore for any purpose from that facility.

(f) For exploratory drilling operations taking place on the Arctic OCS, if BSEE determines that the CAP or progress toward implementing the CAP is not satisfactory, BSEE may order you to shut down all or part of your operations.

**PART 254—OIL-SPILL RESPONSE REQUIREMENTS FOR FACILITIES LOCATED SEAWARD OF THE COAST LINE**

■ 12. The authority citation for 30 CFR part 254 continues to read as follows:

Authority: 33 U.S.C. 1321.

■ 13. Amend § 254.6 by:

■ a. Revising the definition of “Adverse weather conditions.”

■ b. Adding a new definition for “Arctic OCS” in alphabetical order, and

■ c. Adding a new definition for “Ice intervention practices” in alphabetical order.

**§ 254.6 Definitions.**

\* \* \* \* \*

*Adverse weather conditions* means, for the purposes of this part, weather conditions found in the operating area that make it difficult for response equipment and personnel to clean up or remove spilled oil or hazardous substances. These conditions include, but are not limited to: Fog, inhospitable water and air temperatures, wind, sea ice, extreme cold, freezing spray, snow, currents, sea states, and extended periods of low light. Adverse weather conditions do not refer to conditions under which it would be dangerous or impossible to respond to a spill, such as a hurricane.

*Arctic OCS* means the Beaufort Sea and Chukchi Sea Planning Areas, as described in the Proposed Final OCS Oil and Gas Leasing Program for 2012–2017 (June 2012).

\* \* \* \* \*

*Ice intervention practices* means the equipment, vessels, and procedures used to increase oil encounter rates and the effectiveness of spill response techniques and equipment when sea ice is present.

\* \* \* \* \*

14. Add § 254.55 to Subpart D to read as follows:

**§ 254.55 Spill response plans for facilities located in Alaska State waters seaward of the coast line in the Chukchi and Beaufort Seas.**

Response plans for facilities conducting exploratory drilling operations from a MODU seaward of the coast line in Alaska State waters in the Chukchi and Beaufort Seas must follow the requirements contained within subpart E of this part, in addition to the other requirements of this subpart. Such response plans must address how the source control procedures selected to comply with State law will be integrated into the planning, training, and exercise requirements of §§ 254.70(a), 254.90(a), and 254.90(c) in the event that the

proposed operations do not incorporate the capping stack, cap and flow system, containment dome, and/or other similar subsea and surface devices and equipment and vessels referenced in those sections.

■ 15. Add new subpart E to read as follows:

**Subpart E—Oil-Spill Response Requirements for Facilities Located on the Arctic OCS**

Sec.

254.65 Purpose.

254.66 through 254.69 [Reserved]

254.70 What are the additional requirements for facilities conducting exploratory drilling from a MODU on the Arctic OCS?

254.71 through 254.79 [Reserved]

254.80 What additional information must I include in the “Emergency response action plan” section for facilities conducting exploratory drilling from a MODU on the Arctic OCS?

254.81 through 254.89 [Reserved]

254.90 What are the additional requirements for exercises of your response personnel and equipment for facilities conducting exploratory drilling from a MODU on the Arctic OCS?

**Subpart E—Oil-Spill Response Requirements for Facilities Located on the Arctic OCS**

**§ 254.65 Purpose.**

This subpart describes the additional requirements for preparing spill response plans and maintaining oil spill preparedness for facilities conducting exploratory drilling operations from a MODU on the Arctic OCS.

**§§ 254.66 through 254.69 [Reserved]**

**§ 254.70 What are the additional requirements for facilities conducting exploratory drilling from a MODU on the Arctic OCS?**

In addition to meeting the applicable requirements of this part, your response plan must:

(a) Describe how the relevant personnel, equipment, materials, and support vessels associated with the capping stack, cap and flow system, containment dome, and other similar subsea and surface devices and equipment and vessels will be integrated into oil spill response incident action planning;

(b) Describe how you will address human factors, such as cold stress and cold related conditions, associated with oil spill response activities in adverse weather conditions and their impacts on decision-making and health and safety; and

(c) Undergo plan-holder review prior to handling, storing, or transporting oil in connection with seasonal exploratory

drilling activities, and all resulting modifications must be submitted to the Regional Supervisor. If this review does not result in modifications, you must inform the Regional Supervisor in writing that there are no changes. The requirements of this subsection are in lieu of the requirements in § 254.30(a).

**§§ 254.71 through 254.79 [Reserved]**

**§ 254.80 What additional information must I include in the “Emergency response action plan” section for facilities conducting exploratory drilling from a MODU on the Arctic OCS?**

In addition to the requirements in § 254.23, you must include the following information in the emergency response action plan section of your response plan:

(a) A description of your ice intervention practices and how they will improve the effectiveness of the oil spill response options and strategies that are listed in your OSRP in the presence of sea ice. When developing the ice intervention practices for your oil spill response plan, you must consider, at a minimum, the use of specialized tactics, modified response equipment, ice management assist vessels, and technologies for the identification, tracking, containment and removal of oil in ice.

(b) On areas of the Arctic OCS where a planned shore-based response would not satisfy § 254.1(a):

(1) A list of all resources required to ensure an effective offshore-based response capable of operating in adverse weather conditions. This list must include a description of how you will ensure the shortest possible transit times, including but not limited to establishing an offshore resource management capability (*e.g.*, sea-based staging, maintenance, and berthing logistics); and

(2) A list and description of logistics resupply chains, including waste management, that effectively factor in the remote and limited infrastructure that exists in the Arctic and ensure you can adequately sustain all oil spill response activities for the duration of the response. The components of the logistics supply chain include, but are not limited to:

(i) Personnel and equipment transport services;

(ii) Airfields and types of aircraft that can be supported;

(iii) Capabilities to mobilize supplies (*e.g.*, response equipment, fuel, food, fresh water) and personnel to the response sites;

(iv) Onshore staging areas, storage areas that may be used en route to staging areas, and camp facilities to

support response personnel conducting offshore, nearshore and shoreline response; and

(v) Management of recovered fluid and contaminated debris and response materials (*e.g.*, oiled sorbents), as well as waste streams generated at offshore and on-shore support facilities (*e.g.*, sewage, food, and medical).

(c) A description of the system you will use to maintain real-time location tracking for all response resources while operating, transiting, or staging/maintaining such resources during a spill response.

**§§ 254.81 through 254.89 [Reserved]**

**§ 254.90 What are the additional requirements for exercises of your response personnel and equipment for facilities conducting exploratory drilling from a MODU on the Arctic OCS?**

In addition to the requirements in § 254.42, the following requirements apply to exercises for your response personnel and equipment for facilities conducting exploratory drilling from a MODU on the Arctic OCS:

(a) You must incorporate the personnel, materials, and equipment identified in § 254.70(a), the safe working practices identified in § 254.70(b), the ice intervention practices described in § 254.80(a), the offshore-based response requirements in § 254.80(b), and the resource tracking requirements in § 254.80(c) into your spill-response training and exercise activities.

(b) For each season in which you plan to conduct exploratory drilling operations from a MODU on the Arctic OCS, you must notify the Regional Supervisor 60 days prior to handling, storing, or transporting oil.

(c) After the Regional Supervisor receives notice pursuant to § 254.90(b), the Regional Supervisor may direct you to deploy and operate your spill response equipment and/or your capping stack, cap and flow system, and containment dome, and other similar subsea and surface devices and equipment and vessels, as part of announced or unannounced exercises or compliance inspections. For the purposes of this section, spill response equipment does not include the use of blowout preventers, diverters, heavy weight mud to kill the well, relief wells, or other similar conventional well control options.

**CHAPTER V—BUREAU OF OCEAN ENERGY MANAGEMENT, DEPARTMENT OF THE INTERIOR**

**PART 550—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF**

■ 16. The authority citation for 30 CFR part 550 continues to read as follows:

**Authority:** 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

■ 17. Amend § 550.105 by adding new definitions for “Arctic OCS” and “Arctic OCS conditions” in alphabetical order to read as follows:

**§ 550.105 Definitions.**

\* \* \* \* \*

*Arctic OCS* means the Beaufort Sea and Chukchi Sea Planning Areas, as described in the Proposed Final OCS Oil and Gas Leasing Program for 2012–2017 (June 2012).

*Arctic OCS conditions* means, for the purposes of this part, the conditions operators can reasonably expect during operations on the Arctic OCS. Such conditions, depending on the time of year, include, but are not limited to: extreme cold, freezing spray, snow, extended periods of low light, strong winds, dense fog, sea ice, strong currents, and dangerous sea states. Remote location, relative lack of infrastructure, and the existence of subsistence hunting and fishing areas are also characteristic of the Arctic region.

\* \* \* \* \*

■ 18. Amend § 550.200 paragraph (a) by adding the term “IOP” in alphabetical order:

**§ 550.200 Definitions.**

\* \* \* \* \*

(a) \* \* \*

*IOP* means Integrated Operations Plan.

\* \* \* \* \*

■ 19. Add a new § 550.204 to read as follows:

**§ 550.204 When must I submit my IOP for proposed Arctic exploratory drilling operations and what must the IOP include?**

If you propose exploratory drilling activities on the Arctic OCS, you must submit an Integrated Operations Plan (IOP) to the Regional Supervisor at least 90 days prior to filing your EP. Your IOP must describe how your exploratory drilling program will be designed and conducted in an integrated manner suitable for Arctic OCS Conditions and include the following information:

(a) Information describing how all vessels and equipment will be designed, built, and/or modified to account for Arctic OCS Conditions;

(b) A schedule of your exploratory drilling program, including contractor work on critical components of your program;

(c) A description of your mobilization and demobilization operations, including tow plans suitable for Arctic OCS Conditions, as well as your general maintenance schedule for vessels and equipment;

(d) A description of your exploratory drilling program objectives and timelines for each objective, including general plans for abandonment of the well(s), such as:

(1) Contingency plans for temporary abandonment in the event of ice encroachment at the drill site;

(2) Plans for permanent abandonment; and

(3) Plans for temporary seasonal abandonment;

(e) A description of your weather and ice forecasting capabilities for all phases of the exploration program, including a description of how you would respond to and manage ice hazards and weather events;

(f) A description of work to be performed by contractors supporting your exploration drilling program (including mobilization and demobilization), including:

(1) How such work will be designed or modified to account for Arctic OCS Conditions; and

(2) Your concepts for contractor management, oversight, and risk management.

(g) A description of how you will ensure operational safety while working in Arctic OCS Conditions, including but not limited to:

(1) The safety principles that you intend to apply to yourself and your contractors;

(2) The accountability structure within your organization for implementing such principles;

(3) How you will communicate such principles to your employees and contractors; and

(4) How you will determine successful implementation of such principles.

(h) Information regarding your preparations and plans for staging of oil spill response assets;

(i) A description of your efforts to minimize impacts of your exploratory drilling operations on local community infrastructure, including but not limited to housing, energy supplies, and services; and

(j) A description of whether and to what extent your project will rely on local community workforce and spill cleanup response capacity.

■ 20. Revise § 550.206 to read as follows:

**§ 550.206 How do I submit the IOP, EP, DPP, or DOCD?**

(a) *Number of copies.* When you submit an IOP, EP, DPP, or DOCD to BOEM, you must provide:

(1) Four copies that contain all required information (proprietary copies);

(2) Eight copies for public distribution (public information copies) that omit information that you assert is exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the implementing regulations (43 CFR part 2); and

(3) Any additional copies that may be necessary to facilitate review of the IOP, EP, DPP, or DOCD by certain affected States and other reviewing entities.

(b) *Electronic submission.* You may submit part or all of your IOP, EP, DPP, or DOCD and its accompanying information electronically. If you prefer to submit your IOP, EP, DPP, or DOCD electronically, ask the Regional Supervisor for further guidance.

(c) *Withdrawal after submission.* You may withdraw your proposed IOP, EP, DPP, or DOCD at any time for any reason. Notify the appropriate BOEM OCS Region if you do.

■ 21. Amend § 550.220 by:

■ a. Revising paragraph (a), and

■ b. Adding a new paragraph (c).

**§ 550.220 If I propose activities in the Alaska OCS Region, what planning information must accompany the EP?**

\* \* \* \* \*

(a) *Emergency Plans.* A description of your emergency plans to respond to a fire, explosion, personnel evacuation, or loss of well control, as well as a loss or disablement of a drilling unit, and loss of or damage to a support vessel, offshore vehicle, or aircraft.

\* \* \* \* \*

(c) If you propose exploration activities on the Arctic OCS, the following planning information must also accompany your EP:

(1) *Suitability for Arctic OCS conditions.* A description of how your exploratory drilling activities will be designed and conducted in a manner suitable for Arctic OCS conditions and how such activities will be managed and overseen as an integrated endeavor.

(2) *Ice and weather management.* A description of your weather and ice forecasting and management plans for all phases of your exploratory drilling activities, including:

(i) A description of how you will respond to and manage ice hazards and weather events;

(ii) Your ice and weather alert procedures;

(iii) Your procedures and thresholds for activating your ice and weather management system(s); and

(iv) Confirmation that you will operate ice and weather management and alert systems continuously throughout the planned operations, including mobilization and demobilization operations to and from the Arctic OCS.

(3) *Source control and containment equipment capabilities.* A general description of how you will comply with § 250.471 of this title.

(4) *Deployment of a relief well rig.* A general description of how you will comply with § 250.472 of this title, including a description of the relief well

rig, the anticipated staging area of the relief well rig, an estimate of the time it would take for the relief well rig to arrive at the site of a loss of well control, how you would drill a relief well if necessary, and the approximate timeframe to complete relief well operations.

(5) *Resource-sharing.* Any agreements you have with third parties for the sharing of assets or the provision of mutual aid in the event of an oil spill or other emergency.

(6) *Anticipated end of seasonal operations dates.* Your projected end of season dates, and the information used to identify those dates, for:

(i) The completion of on-site operations, which is contingent upon your capability in terms of equipment and procedures to manage and mitigate risks associated with Arctic OCS Conditions; and

(ii) The termination of drilling operations into zones capable of flowing liquid hydrocarbons to the surface consistent with the relief rig planning requirements under § 250.472 of this title and with your estimated timeframe under paragraph (c)(4) of this section for completion of relief well operations.

[FR Doc. 2015-03609 Filed 2-20-15; 4:15 pm]

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# FEDERAL REGISTER

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Part IV

The President

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Proclamation 9232—Establishment of the Browns Canyon National Monument



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# Presidential Documents

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Title 3—

Proclamation 9232 of February 19, 2015

The President

## Establishment of the Browns Canyon National Monument

By the President of the United States of America

### A Proclamation

In central Colorado's vibrant upper Arkansas River valley, the rugged granite cliffs, colorful rock outcroppings, and stunning mountain vistas of Browns Canyon form an iconic landscape that attracts visitors from around the world. The landscape's canyons, rivers, and backcountry forests have provided a home for humans for over 10,000 years, and the cultural and historical resources found in this landscape are a testament to the area's Native Peoples as well as the history of more recent settlers and mining communities. The area's unusual geology and roughly 3,000-foot range in elevation support a diversity of plants and wildlife, including a significant herd of bighorn sheep. Browns Canyon harbors a wealth of scientifically significant geological, ecological, riparian, cultural, and historic resources, and is an important area for studies of paleoecology, mineralogy, archaeology, and climate change.

Following its descent between the Sawatch and Mosquito Ranges, the Arkansas River flows through Browns Canyon in the heart of the upper Arkansas River valley. The Arkansas River valley is the northernmost valley in the Río Grande Rift system, one of the most significant rift systems in the world and one of few where the Earth's continental crust is actively moving apart. The 35 million-year-old Río Grande Rift begins in the State of Chihuahua in Mexico and extends northward through New Mexico and into Colorado to a terminus in the mountains just north of Browns Canyon.

The Browns Canyon area of the upper Arkansas River valley has long offered both a permanent source of water and a means of transportation for its human inhabitants. The area lies within the transition zone between the cultural traditions of the Great Basin and Plains peoples. As a transportation corridor where stable sources of subsistence resources could be found, both migrating people and permanent inhabitants left traces of their presence in this area. Ancestors of the Ute, Apache, Eastern Shoshone, and Comanche Indians are known to have traversed this dramatic landscape while hunting and gathering.

The upper Arkansas River valley was foundational to the establishment of today's tribal configuration. It was here that the proto-Comanche (Numuna) split into two groups, the Comanche and the Eastern Shoshone. The Buffalo-Eater Band (allies of the Utes) broke away from the Eastern Shoshone in the upper Arkansas River valley vicinity sometime between the late 1600s and early 1700s, traveling south into what is present-day New Mexico, Texas, southern Colorado, western Kansas, and the panhandle of Oklahoma.

While most archaeological resources in the Browns Canyon area have not yet been surveyed or recorded, the story of people living in the upper Arkansas River valley is told through artifacts dating back over 10,000 years. Of the resources surveyed, there are 18 known archaeological sites within the Browns Canyon area, including 5 prehistoric open lithic sites that have been determined to be eligible for the National Register of Historic Places. Primarily seasonal camps, these sites include open campsites, culturally modified trees, wickiups, tipi rings, chipped stone manufacture and processing sites, a possible ceramic pottery kiln, and rock shelter sites that



date to the Archaic Period. The sites range from early Archaic Period and possibly Paleo-Indian Period (around 8,000 to 13,000 years before present), which would make this among the earliest known sites in the region, to the Late Archaic Period to proto-historic period (around 3,000 years before present to the 19th century A.D.).

European exploration of the Browns Canyon region began when the Spanish explorer Juan de Ulibarri visited in 1706. A century later, Zebulon Pike explored the Browns Canyon area after his failed attempt to summit what is now known as Pike's Peak. During the late 18th and early 19th centuries, the Spanish army patrolled the upper Arkansas River valley as far north as Leadville to secure the boundaries of Spanish influence and attempt to bar access by competing traders and explorers. Fur trappers exploited the area in the first few decades of the 1800s. The region later became a center for mining, including one of the United States major historic mining districts for fluorite, a colorful mineral with both ornamental and industrial uses. The remnants of this area's mining history include small, abandoned mine sites, old cabin foundations, and nearby mining ghost towns.

Discovery of gold along the Arkansas River in the 1850s and the 1870s silver boom in Leadville brought an influx of people and a need for transportation. In the 1870s, stage roads carried thousands of passengers through this region every year. In the 1880s, after a multi-year legal and armed battle between rival rail companies, the Denver and Río Grande Railway became the major transportation option for the region. The section of railroad bed that runs through Browns Canyon east of the Arkansas River is eligible for listing on the National Register of Historic Places. Even today, this same upper Arkansas River valley remains a major transportation corridor for Chaffee County residents and visitors, as well as an important resource for recreational anglers and boaters, and area ranchers and farmers. Local communities have proposed and conducted a feasibility study for establishing the Arkansas Stage and Rail Trail, which would serve as a testament to this travel corridor's prehistoric and historic significance.

The 1.6 billion-year-old Precambrian granodiorite batholith that constitutes the Canyon is incised by steep gulches that cut through the pink granite and metamorphic rock. Stafford Gulch provides astounding views of the unique Reef formation, a long and distinctive face of exposed rock. During the Pleistocene Epoch, glaciers covered the rugged canyons, gulches, and mountains that awe visitors today. The movement of these glaciers created unique topographical features in the river valley—including glacial cirques, flat, mesa-like terraces, and remnants of large moraines—that are not found along other major streams in the region. While shaping the topography, the glaciers also filled the valley below with masses of sediment, including the gold, silver, and semi-precious gems that fueled the mining booms of the 1800s. These gems, including the garnets that lend their name to Ruby Mountain in the northern part of the Browns Canyon area, continue to interest professional and amateur geologists.

Portions of the Browns Canyon area offer a relative wealth of Pennsylvanian age geologic exposures of the Minturn formation and Belden shale that include a diverse assemblage of invertebrate fossils. These sites represent the accumulation of shell fossils in an ancient reef environment, and include remains of bivalves, brachiopods, gastropods, echinoids, nautiloids, conodonts, crinoids, bryozoans, and vertebrates including sharks and bony fish. Many of the fossil forms remain undescribed and will form the basis for future paleontological research.

The topographic and geologic diversity of the Browns Canyon area has given rise to one of the most significant regions for biodiversity in Colorado. The forest community incorporates a transition zone, with semi-arid pinyon-juniper and mountain mahogany woodlands on the lower slopes giving way to ponderosa pine, Rocky Mountain bristlecone pine, and Douglas fir at higher elevations. Scattered pockets of aspen, willow, Rocky Mountain juniper, river birch, and narrowleaf cottonwood can be found in riparian

areas. The Aspen Ridge area is also home to a significant stand of aspen. The understory is home to a variety of plant species, including blue grama grass, mountain muhly, Indian ricegrass, Arizona fescue, blue bunchgrass, prickly pear, cholla, yucca, isolated pockets of alpine bluegrass, and the endemic Brandegees buckwheat. A stunning array of wildflowers such as the scarlet gilia and larkspur bloom here during the spring and summer. Near Ruby Mountain, imperiled plant species such as Fendler's Townsend-daisy, Fendler's false cloak-fern, livemore fiddleleaf, and the endemic Front-Range alumroot can be found. The plant community in this area has repeatedly evolved during periods of climate change since the Eocene Epoch. Geologic and climatic changes since the Precambrian have made the area an important site for research on geology and paleoecology as well as the effects of climate change, wildland fire, and other disturbances on plant and animal communities.

Some of Colorado's most emblematic animal species call Browns Canyon home. Mountain lions, bighorn sheep, mule deer, bobcat, red and gray fox, American black bear, coyote, American pine marten, kangaroo rat, elk, and several species of tree and ground squirrels can all be found in the Browns Canyon area, which provides essential habitat for mammals and birds alike and attracts hunters and wildlife viewers. Raptors such as red-tailed hawks, Swainson's hawks, golden eagles, turkey vultures, and prairie falcons make their homes in the rocky cliffs and prey upon the abundance of small animals that live in this area. The area also provides habitat suitable for peregrine falcons, which have been identified for possible future reintroduction here, as well as potential habitat for the threatened Canada lynx. A stunning diversity of other bird species, including the cliff swallow, Canada jay, mourning dove, flicker, blue jay, wild turkey, great horned owl, western screech owl, and saw whet owl, attract ornithologists and bird enthusiasts alike to these remote hills.

A number of reptile and amphibian species occur in the area, including the sensitive boreal toad and northern leopard frog. The Browns Canyon area represents one of the only riparian ecosystems along the Arkansas River that remains relatively undisturbed and contains an intact biotic community.

The protection of the Browns Canyon area will preserve its prehistoric and historic legacy and maintain its diverse array of scientific resources, ensuring that the prehistoric, historic, and scientific values remain for the benefit of all Americans. The area also provides world class river rafting and outdoor recreation opportunities, including hunting, fishing, hiking, camping, mountain biking, and horseback riding.

WHEREAS section 320301 of title 54, United States Code (known as the "Antiquities Act"), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Federal Government to be national monuments, and to reserve as a part thereof parcels of land, the limits of which shall be confined to the smallest area compatible with the proper care and management of the objects to be protected;

WHEREAS it is in the public interest to preserve the objects of scientific and historic interest on the lands in and around Browns Canyon;

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim the objects identified above that are situated upon lands and interests in lands owned or controlled by the Federal Government to be the Browns Canyon National Monument (monument) and, for the purpose of protecting those objects, reserve as part thereof all lands and interests in lands owned or controlled by the Federal Government within the boundaries described on the accompanying map, which is attached to and forms a part of this proclamation. These reserved Federal lands and interests in lands encompass approximately 21,586 acres. The

boundaries described on the accompanying map are confined to the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries described in the accompanying map are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, leasing, or other disposition under the public land laws or laws applicable to the U.S. Forest Service, including location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument.

The establishment of the monument is subject to valid existing rights. Lands and interests in lands not owned or controlled by the Federal Government within the boundaries described on the accompanying map shall be reserved as a part of the monument, and objects identified above that are situated upon those lands and interests in lands shall be part of the monument, upon acquisition of ownership or control by the Federal Government.

The Secretary of the Interior and the Secretary of Agriculture (Secretaries) shall manage the monument through the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS), pursuant to their respective applicable legal authorities, to implement the purposes of this proclamation. The USFS shall manage that portion of the monument within the boundaries of the National Forest System (NFS), and the BLM shall manage the remainder of the monument. The lands administered by the BLM shall be managed as a unit of the National Landscape Conservation System, pursuant to applicable legal authorities, including, as applicable, the provisions of section 603 of the Federal Land Policy and Management Act (43 U.S.C. 1782) governing the management of wilderness study areas. The lands administered by the USFS shall be managed as part of the Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands.

For purposes of protecting and restoring the objects identified above, the Secretaries shall jointly prepare a management plan for the monument and shall promulgate such regulations for its management as deemed appropriate. In developing any management plans and any management rules and regulations governing NFS lands within the monument, the Secretary of Agriculture, through the USFS, shall consult with the Secretary of the Interior through the BLM. The Secretaries shall provide for public involvement in the development of the management plan including, but not limited to, consultation with tribal, State, and local governments. In the development and implementation of the management plan, the Secretaries shall maximize opportunities, pursuant to applicable legal authorities, for shared resources, operational efficiency, and cooperation.

Except for emergency or authorized administrative purposes, motorized and mechanized vehicle use in the monument shall be allowed only on roads and trails designated for such use, consistent with the care and management of the objects identified above. After the date of this proclamation, new roads or trails may only be designated for motorized vehicle use in areas west of the Arkansas River and at the Ruby Mountain Recreation Site and then only as necessary to provide reasonable river or campground access, consistent with the applicable management plan. Forest Road 184 may be realigned or improved only if for the care and management of the objects identified above or as necessary for public safety.

Nothing in this proclamation affects or shall be deemed to preclude the Secretaries from reissuing existing authorizations or agreements for the cooperative administration of the Arkansas Headwaters Recreation Area. New or modified authorizations or agreements for such purpose may be issued, consistent with the care and management of the objects identified above. The Secretaries also may authorize and reauthorize commercial recreational services within the monument, including outfitting and guiding, consistent with the care and management of the objects identified above.

Nothing in this proclamation shall be deemed to affect the operation or use of the existing railroad corridor as a railroad right of way pursuant to valid existing rights or for recreational purposes consistent with the care and management of the objects identified above.

Nothing in this proclamation shall be deemed to enlarge or diminish the rights of any Indian tribe. The Secretaries shall, to the maximum extent permitted by law and in consultation with Indian tribes, ensure the protection of Indian sacred sites and traditional cultural properties in the monument and provide access by members of Indian tribes for traditional cultural and customary uses, consistent with the American Indian Religious Freedom Act (42 U.S.C. 1996) and Executive Order 13007 of May 24, 1996 (Indian Sacred Sites).

Laws, regulations, and policies followed by the BLM or the USFS in issuing and administering grazing permits or leases on lands under their jurisdiction shall continue to apply with regard to the lands in the monument, consistent with the care and management of the objects identified above.

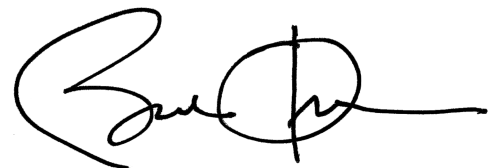
This proclamation does not alter or affect the valid existing water rights of any party, including the United States. This proclamation does not reserve water as a matter of Federal law, and the inclusion of the land underlying the Arkansas River in the monument shall not be construed to reserve such a right. This proclamation does not alter or affect agreements governing the management and administration of Arkansas River flows, including the Voluntary Flow Management Program.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Colorado, including its jurisdiction and authority with respect to fish and wildlife management.

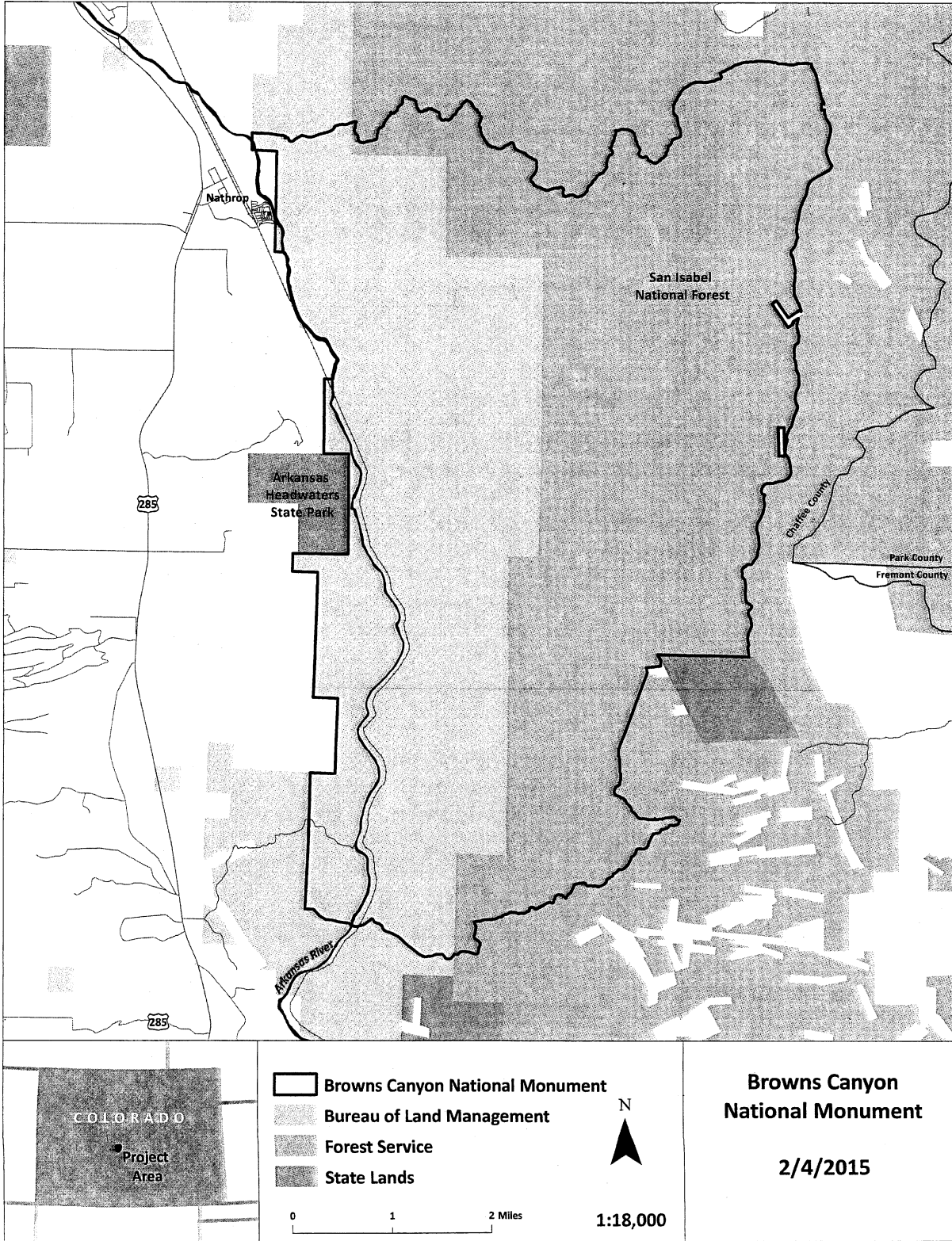
Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of the monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of February, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

A handwritten signature in black ink, appearing to be Barack Obama's signature, written in a cursive style.

Billing code 3295-F5





# FEDERAL REGISTER

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Part V

The President

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Notice of February 23, 2015—Continuation of the National Emergency With Respect to Libya



## Title 3—

Notice of February 23, 2015

## The President

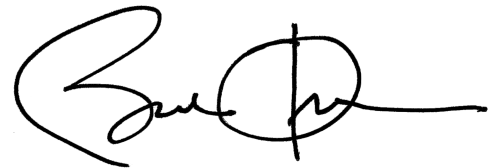
**Continuation of the National Emergency With Respect to Libya**

On February 25, 2011, by Executive Order 13566, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions of Colonel Muammar Qadhafi, his government, and close associates, who took extreme measures against the people of Libya, including by using weapons of war, mercenaries, and wanton violence against unarmed civilians. In addition, there was a serious risk that Libyan state assets would be misappropriated by Qadhafi, members of his government, members of his family, or his close associates if those assets were not protected. The foregoing circumstances, the prolonged attacks, and the increased numbers of Libyans seeking refuge in other countries caused a deterioration in the security of Libya and posed a serious risk to its stability.

The situation in Libya continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, and we need to protect against the diversion of assets or other abuse by certain members of Qadhafi's family and other former regime officials.

For this reason, the national emergency declared on February 25, 2011, and the measures adopted on that date to deal with that emergency, must continue in effect beyond February 25, 2015. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13566.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,  
February 23, 2015.



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