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# Rules and Regulations

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

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2013-0860; Airspace Docket No. 12-ASO-36]

RIN 2120-AA66

#### Establishment and Modification of Area Navigation (RNAV) Routes; Atlanta, GA

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes 14 RNAV Q-routes and modifies 4 Q-routes to enhance the efficiency of the National Airspace System (NAS) by improving the flow of air traffic in the vicinity of Atlanta, GA, and Charlotte, NC.

**DATES:** Effective date 0901 UTC, April 3, 2014. The Director of the **Federal Register** approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8783.

#### SUPPLEMENTARY INFORMATION:

#### History

On November 27, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish 14 new RNAV routes and modify 4 RNAV routes in the vicinity of the Atlanta, GA and Charlotte, NC areas (78 FR 70895). Interested parties were invited to participate in this rulemaking effort by submitting written comments

on the proposal. No comments were received.

#### Differences from the NPRM

The order of points listed in the descriptions of Q-110 and Q-118 is reversed in this rule from that shown in the NPRM. This is only an editorial change for format standardization and does not affect the track of the two routes.

#### The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish 14 new RNAV Q-routes and modify 4 Q-routes to improve the flow of air traffic in the Atlanta, GA, and Charlotte, NC areas. The changes are described below.

**Q-22:** Q-22 is extended approximately 582 nautical miles (NM) to the northeast of its current termination point, to the BEARI, VA, waypoint (WP) to segregate aircraft landing at various airports in the northeast U.S.

**Q-39:** Q-39 is a new route extending between the CLAWD, NC, WP and the TARCI, WV, fix, used by aircraft landing at Port Columbus, OH, Cleveland, OH and Detroit, MI airports.

**Q-40:** Q-40 is extended approximately 548 NM to the northeast terminating at the FANPO, VA, WP, providing a shorter route and reducing conflicts with departures from the Atlanta, GA, area.

**Q-50:** Q-50 is a new route extending between the Louisville, KY, VORTAC (IIU) and the CUBIM, KY, WP, to help segregate Charlotte, NC, departures from conflicting high altitude flows headed towards the Louisville, KY area.

**Q-52:** Q-52 is a new route extending between the CHOPZ, GA, WP and the COLZI, NC, fix, providing an RNAV alternative to jet route J-37 for southwest-bound overflights joining traffic departing from the CLT area and overflying ATL. The route parallels J-37 between COLZI and CHOPZ thereby segregating the southwest-bound flights from ATL departure flows that are in opposite direction proceeding northeast-bound.

**Q-54:** Q-54 is a new route extending between the Greenwood, SC, VORTAC (GRD) and the NUTZE, NC, WP, serving ATL departures destined to the Norfolk, VA, area.

**Q-56:** Q-56 is a new route that extends between the CATLN, AL, Fix

and the KIWI, VA, WP, diverging northeasterly from Q-22, above, to serve aircraft landing at Ronald Reagan Washington National Airport and Joint Base Andrews.

**Q-58:** Q-58 is a new route that extends between the KELLN, SC, WP and the PEETT, NC, WP, used by ATL departures headed to Baltimore/Washington International Thurgood Marshall Airport.

**Q-60:** Q-60 is a new route extending between the Spartanburg, SC, VORTAC (SPA) and the JAXSN, VA, fix, to serve aircraft landing at Washington Dulles International, Richmond, VA, International and LaGuardia (LGA) airports.

**Q-63:** Q-63 is a new route extending between the DOOGE, VA, WP and the HEVAN, IN, WP, to facilitate CLT departures traveling northwest-bound and overflying the Cincinnati, OH, area.

**Q-64:** Q-64 is a new route extending between the CATLN, AL, fix and the Tar River, NC, VORTAC (TYI), providing routing for aircraft destined to airports in the New York City area.

**Q-65:** Q-65 is a new route extending between the JEFOI, GA, WP and Rosewood, OH, VORTAC (ROD), to serve northbound traffic from Florida and to the east of ATL.

**Q-66:** Q-66 is a new route extending between the Little Rock, AR, VORTAC (LIT) and the ALEAN, VA, WP, transferring RNAV aircraft off conventional jet routes and away from the Volunteer, TN (VXV) and Pulaski, VA (PSK) VORTACs, to facilitate climbs for northbound aircraft departing ATL and providing a more direct route to Little Rock.

**Q-67:** Q-67 is a new route extending between the SMITH, TN, WP and Henderson, WV, VORTAC (HNN), providing RNAV routing for ATL departures.

**Q-69:** Q-69 is a new route extending between the BLAAN, SC, WP and Elkins, WV, VORTAC (EKN), better providing for unrestricted climbs for CLT departures headed toward Pittsburgh International (PIT), Buffalo Niagara International (BUF) and Toronto Pearson International (TOR) airports. The route also can be an RNAV alternative to jet route J-53.

**Q-71:** Q-71 is a new route extending between the BOBBD, TN, WP and the GEFPS, WV, fix. In conjunction with Q-67, Q-71 facilitates the segregation of

ATL departures prior to entering the adjacent Air Route Traffic Control Center's (ARTCC) airspace.

**Q-110:** Q-110 is extended an additional 404 NM to the northwest, terminating at the BLANS, IL, WP, serving traffic overflying Atlanta ARTCC airspace from Florida airports en route to the Minneapolis-St. Paul International/World-Chamberlain Airport (MSP).

**Q-118:** Q-118 extends between the KPASA, FL, WP and the LENIE, GA, WP. The LENIE WP is eliminated and instead Q-118 is realigned to the west of LENIE through the JOHNN, GA, Fix. From the JOHNN Fix, Q-118 is extended approximately 544 NM to the north to terminate at the Marion, IN, VOR/DME (MZZ). This supports a preferred arrival route into Chicago O'Hare International Airport (ORD).

High altitude RNAV routes are published in paragraph 2006 of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as

it modifies the route structure as required to enhance the safe and efficient flow of air traffic in the eastern United States.

#### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

- 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

*Paragraph 2006 United States Area Navigation Routes*

\* \* \* \* \*

#### Q-22 GUSTI, LA to BEARI, VA [Amended]

GUSTI, LA FIX (lat. 29°58'15" N., long. 92°54'35" W.)  
OYSTY, LA FIX (lat. 30°28'15" N., long. 90°11'49" W.)  
ACMES, AL WP (lat. 30°55'27" N., long. 88°22'11" W.)  
CATLN, AL FIX (lat. 31°18'26" N., long. 87°34'48" W.)  
TWOUP, GA WP (lat. 33°53'45" N., long. 83°49'08" W.)  
Spartanburg (SPA), SC VORTAC (lat. 35°02'01" N., long. 81°55'37" W.)  
NYBLK, NC WP (lat. 35°34'35" N., long. 81°02'34" W.)  
MASHI, NC WP (lat. 35°58'18" N., long. 80°23'05" W.)  
KIDDO, NC WP (lat. 36°10'35" N., long. 80°02'24" W.)  
OMENS, VA WP (lat. 36°49'29" N., long. 78°55'30" W.)

BEARI, VA WP (lat. 37°12'02" N., long. 78°15'24" W.)

#### Q-39 CLAWD, NC to TARCI, WV [New]

CLAWD, NC WP (lat. 36°25'09" N., long. 81°08'50" W.)  
TARCI, WV FIX (lat. 38°16'36" N., long. 81°18'34" W.)

#### Q-40 Alexandria, LA (AEX) to FANPO, VA [Amended]

Alexandria, LA (AEX) VORTAC (lat. 31°15'24" N., long. 92°30'04" W.)  
DOOMS, MS WP (lat. 31°53'08" N., long. 91°09'56" W.)  
WINAP, MS WP (lat. 32°38'00" N., long. 89°21'56" W.)  
MISLE, AL WP (lat. 33°24'00" N., long. 87°38'00" W.)  
BFOLO, AL WP (lat. 34°03'34" N., long. 86°31'30" W.)  
NIOLA, GA WP (lat. 34°47'00" N., long. 85°16'14" W.)  
JAARE, TN WP (lat. 35°44'20" N., long. 83°32'30" W.)  
OJESS, TN WP (lat. 35°55'00" N., long. 83°10'54" W.)  
ALEAN, VA WP (lat. 36°43'55" N., long. 81°37'26" W.)  
FEEDS, VA WP (lat. 37°16'29" N., long. 80°30'33" W.)  
MAULS, VA WP (lat. 37°52'49" N., long. 79°19'49" W.)  
FANPO, VA WP (lat. 38°25'25" N., long. 78°13'51" W.)

#### Q-50 Louisville, KY (IUU) to CUBIM, KY [New]

Louisville, KY (IUU) VORTAC (lat. 38°06'12" N., long. 85°34'39" W.)  
HELUB, KY WP (lat. 37°42'55" N., long. 84°44'28" W.)  
ENGRA, KY WP (lat. 37°29'02" N., long. 84°15'02" W.)  
IBATE, KY WP (lat. 36°59'12" N., long. 83°13'40" W.)  
CUBIM, KY WP (lat. 36°52'37" N., long. 83°00'21" W.)

#### Q-52 CHOPZ, GA to COLZI, NC [New]

CHOPZ, GA WP (lat. 33°51'24" N., long. 83°41'18" W.)  
IPTAY, GA WP (lat. 34°20'57" N., long. 82°50'23" W.)  
AWYAT, SC WP (lat. 35°02'21" N., long. 81°36'45" W.)  
COLZI, NC FIX (lat. 36°13'39" N., long. 80°30'32" W.)

#### Q-54 Greenwood, SC (GRD) to NUTZE, NC [New]

Greenwood, SC (GRD) VORTAC (lat. 34°15'06" N., long. 82°09'15" W.)  
NYLLA, SC WP (lat. 34°34'39" N., long. 81°17'00" W.)  
CHYPS, NC WP (lat. 34°53'18" N., long. 80°25'57" W.)  
AHOEY, NC WP (lat. 35°00'36" N., long. 80°05'56" W.)  
RAANE, NC WP (lat. 35°09'22" N., long. 79°41'34" W.)  
NUTZE, NC WP (lat. 35°50'40" N., long. 77°40'57" W.)

#### Q-56 CATLN, AL to KIWI, VA [New]

CATLN, AL FIX (lat. 31°18'26" N., long. 87°34'48" W.)



KBLER, GA WP (lat. 33°43'21" N., long. 83°43'14" W.)  
 KELLN, SC WP (lat. 34°31'33" N., long. 82°10'17" W.)  
 KTOWN, NC WP (lat. 35°11'49" N., long. 81°03'18" W.)  
 BYSCO, NC WP (lat. 35°46'09" N., long. 80°04'34" W.)  
 JOOLI, NC WP (lat. 35°54'55" N., long. 79°49'16" W.)  
 NUUMN, NC WP (lat. 36°09'54" N., long. 79°23'39" W.)  
 ORACL, NC WP (lat. 36°28'02" N., long. 78°52'15" W.)  
 KIWI, VA WP (lat. 36°34'57" N., long. 78°40'04" W.)

#### Q-58 KELLN, SC to PEETT, NC [New]

KELLN, SC WP (lat. 34°31'33" N., long. 82°10'17" W.)  
 GLOVR, NC FIX (lat. 35°30'24" N., long. 80°14'51" W.)  
 LUMAY, NC WP (lat. 35°44'47" N., long. 79°49'40" W.)  
 STUKI, NC WP (lat. 36°09'08" N., long. 79°06'14" W.)  
 PEETT, NC WP (lat. 36°26'45" N., long. 78°34'16" W.)

#### Q-60 Spartanburg, SC (SPA) to JAXSN, VA [New]

Spartanburg, SC (SPA) VORTAC (lat. 35°02'01" N., long. 81°55'37" W.)  
 BYJAC, NC FIX (lat. 35°57'27" N., long. 80°09'03" W.)  
 EVING, NC WP (lat. 36°05'22" N., long. 79°53'56" W.)  
 LOOEY, VA WP (lat. 36°35'05" N., long. 79°01'09" W.)  
 JAXSN, VA FIX (lat. 36°42'38" N., long. 78°47'23" W.)

#### Q-63 DOOGE, VA to HEVAN, IN [New]

DOOGE, VA WP (lat. 36°48'39" N., long. 82°35'14" W.)  
 HAPKI, KY WP (lat. 37°04'56" N., long. 82°51'03" W.)  
 TONIO, KY FIX (lat. 37°15'15" N., long. 83°01'48" W.)  
 OCASE, KY WP (lat. 38°23'59" N., long. 84°11'05" W.)  
 HEVAN, IN WP (lat. 39°21'09" N., long. 85°07'47" W.)

#### Q-64 CATLN, AL to Tar River, NC (TYI) [New]

CATLN, AL FIX (lat. 31°18'26" N., long. 87°34'48" W.)  
 FIGEY, GA WP (lat. 33°52'27" N., long. 82°52'23" W.)  
 Greenwood, SC (GRD) VORTAC (lat. 34°15'06" N., long. 82°09'15" W.)  
 DARRL, SC FIX (lat. 34°47'49" N., long. 81°03'22" W.)  
 IDDA, NC WP (lat. 35°11'05" N., long. 79°59'31" W.)  
 Tar River, NC (TYI) VORTAC (lat. 35°58'36" N., long. 77°42'13" W.)

#### Q-65 JEFOI, GA to Rosewood, OH (ROD) [New]

JEFOI, GA WP (lat. 31°35'37" N., long. 82°31'18" W.)  
 CESKI, GA WP (lat. 32°16'21" N., long. 82°40'39" W.)  
 DAREE, GA WP (lat. 34°37'36" N., long. 83°51'35" W.)

LORNN, TN WP (lat. 35°21'16" N., long. 84°14'19" W.)  
 SOGEE, TN WP (lat. 36°31'51" N., long. 84°11'35" W.)  
 ENGRA, KY WP (lat. 37°29'02" N., long. 84°15'02" W.)  
 OCASE, KY WP (lat. 38°23'59" N., long. 84°11'05" W.)  
 Rosewood, OH (ROD) VORTAC (lat. 40°17'16" N., long. 84°02'35" W.)

#### Q-66 Little Rock, AR (LIT) to ALEAN, VA [New]

Little Rock, AR (LIT) VORTAC (lat. 34°40'40" N., long. 92°10'50" W.)  
 CIVKI, AR WP (lat. 34°48'15" N., long. 91°36'01" W.)  
 RICKX, AR WP (lat. 35°06'30" N., long. 90°14'16" W.)  
 TROVE, TN WP (lat. 35°23'16" N., long. 88°54'39" W.)  
 BAZOO, TN WP (lat. 35°58'32" N., long. 85°52'12" W.)  
 METWO, TN WP (lat. 36°04'22" N., long. 85°18'38" W.)  
 MXEEN, TN WP (lat. 36°28'06" N., long. 83°11'08" W.)  
 ALEAN, VA WP (lat. 36°43'55" N., long. 81°37'26" W.)

#### Q-67 SMTTH, TN to Henderson, WV (HNN) [New]

SMTTH, TN WP (lat. 35°54'42" N., long. 84°00'20" W.)  
 CEMEX, KY WP (lat. 36°45'45" N., long. 83°23'34" W.)  
 IBATE, KY WP (lat. 36°59'12" N., long. 83°13'40" W.)  
 TONIO, KY FIX (lat. 37°15'15" N., long. 83°01'48" W.)  
 Henderson, WV (HNN) VORTAC (lat. 38°45'15" N., long. 82°01'34" W.)

#### Q-69 BLAAN, SC to Elkins, WV (EKN) [New]

BLAAN, SC WP (lat. 33°51'09" N., long. 80°53'33" W.)  
 RYCKI, NC WP (lat. 36°24'43" N., long. 80°25'08" W.)  
 LUNDD, VA WP (lat. 36°44'22" N., long. 80°21'07" W.)  
 ILLSA, VA WP (lat. 37°38'56" N., long. 80°13'18" W.)  
 EWESS, WV WP (lat. 38°21'50" N., long. 80°06'52" W.)  
 Elkins, WV (EKN) VORTAC (lat. 38°54'52" N., long. 80°05'57" W.)

#### Q-71 BOBBD, TN to GEFES, WV [New]

BOBBD, TN WP (lat. 35°47'58" N., long. 83°51'34" W.)  
 ATUME, KY WP (lat. 36°57'14" N., long. 83°03'24" W.)  
 HAPKI, KY WP (lat. 37°04'56" N., long. 82°51'03" W.)  
 KONGO, KY FIX (lat. 37°30'19" N., long. 82°08'13" W.)  
 WISTA, WV WP (lat. 38°17'01" N., long. 81°27'47" W.)  
 GEFES, WV FIX (lat. 39°00'50" N., long. 80°48'50" W.)

#### Q-110 BLANS, IL TO THNDR, FL [Amended]

BLANS, IL WP (lat. 37°28'09" N., long. 088°44'01" W.)  
 BETIE, TN WP (lat. 36°07'30" N., long. 087°54'01" W.)

SKIDO, AL WP (lat. 34°31'49" N., long. 086°53'11" W.)  
 BFOLO, GA WP (lat. 34°03'34" N., long. 086°31'30" W.)  
 JYROD, AL WP (lat. 33°10'53" N., long. 085°51'55" W.)  
 FEONA, GA WP (lat. 31°36'22" N., long. 084°43'08" W.)  
 GULFR, FL WP (lat. 30°12'23" N., long. 083°33'08" W.)  
 BRUTS, FL WP (lat. 29°30'58" N., long. 082°58'57" W.)  
 KPASA, FL WP (lat. 28°10'34" N., long. 081°54'27" W.)  
 RVERO, FL WP (lat. 27°24'35" N., long. 081°35'57" W.)  
 JAYMC, FL WP (lat. 26°58'51" N., long. 081°22'08" W.)  
 THNDR, FL FIX (lat. 26°37'38" N., long. 080°52'00" W.)

#### Q-118 Marion, IN (MZZ) to KPASA, FL [Amended]

Marion, IN (MZZ) VOR/DME (lat. 40°29'36" N., long. 085°40'45" W.)  
 HEVAN, IN WP (lat. 39°21'09" N., long. 085°07'47" W.)  
 VOSTK, KY WP (lat. 38°28'16" N., long. 084°43'04" W.)  
 HELUB, KY WP (lat. 37°42'55" N., long. 084°44'28" W.)  
 JEDER, KY WP (lat. 37°19'31" N., long. 084°45'14" W.)  
 GLAZR, TN WP (lat. 36°25'21" N., long. 084°46'49" W.)  
 KAILL, GA WP (lat. 34°01'47" N., long. 084°31'24" W.)  
 JOHNN, GA FIX (lat. 31°31'23" N., long. 083°57'27" W.)  
 BRUTS, FL WP (lat. 29°30'58" N., long. 082°58'57" W.)  
 KPASA, FL WP (lat. 28°10'34" N., long. 081°54'27" W.)

Issued in Washington, DC, on January 16, 2014.

**Gary A. Norek,**

*Manager, Airspace Policy and Regulations Group.*

[FR Doc. 2014-01288 Filed 1-23-14; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 35

[Docket No. RM13-2-000]

#### Small Generator Interconnection Agreements and Procedures

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains corrections to the final rule (RM13-2-000) which was published in the **Federal Register** of Thursday, December 5, 2013 (78 FR 73239). The regulations revised the *pro forma* Small Generator

Interconnection Procedures (SGIP) and *pro forma* Small Generator Interconnection Agreement (SGIA) originally set forth in Order No. 2006.  
**DATES:** Effective on February 3, 2014.

**FOR FURTHER INFORMATION CONTACT:**  
Leslie Kerr (Technical Information),  
Office of Energy Policy and  
Innovation, Federal Energy Regulatory  
Commission, 888 First Street NE.,  
Washington, DC 20426, (202) 502–  
8540, [Leslie.Kerr@ferc.gov](mailto:Leslie.Kerr@ferc.gov).  
Monica Taba (Technical Information),  
Office of Electric Reliability, Federal  
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20426, (202) 502–6789,  
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Elizabeth Arnold (Legal Information),  
Office of the General Counsel, Federal  
Energy Regulatory Commission, 888  
First Street NE., Washington, DC  
20426, (202) 502–8687,  
[Elizabeth.Arnold@ferc.gov](mailto:Elizabeth.Arnold@ferc.gov).

**SUPPLEMENTARY INFORMATION:**  
146 FERC ¶ 61,019

**Errata Notice**

On November 22, 2013, the Commission issued an order in the above-referenced docket. *Small Generator Interconnection Agreements and Procedures*, 145 FERC ¶ 61,159 (2013). This errata notice serves to correct references to Small Generator

Interconnection Procedures (SGIP) section numbers in the order and the *pro forma* SGIP, and to make other typographical corrections.  
In FR Doc. 2013–28515 appearing on page 73239 in the **Federal Register** of Thursday, December 5, 2013, the following corrections are made:  
1. On page 73256, in the second column, footnote 221 is corrected to read as follows:  
“<sup>221</sup> The Commission adds the following language to the first paragraph of section 2.1 of the SGIP:  
However, Fast Track eligibility is distinct from the Fast Track Process itself, and eligibility does not imply or indicate that a Small Generating Facility will pass the Fast Track screens in section 2.2.1 below or the Supplemental Review screens in section 2.4.4 below.”  
2. On page 73259, in the third column, the third sentence of paragraph 142 is corrected to read as follows:  
“Regarding NRECA, EEI & APPA’s assertion that the use of 100 percent of minimum load limits the flexibility to move loads and the ability to deploy additional sectionalizing devices for reliability enhancement, we note that one of the factors to be considered in the safety and reliability screen of the supplemental review asks whether operational flexibility is reduced by the proposed Small Generating Facility (see SGIP section 2.4.4.3.5).”

3. On page 73264, in the second column, the last sentence of paragraph 182 is corrected to read as follows:  
“We do, however, modify section 2.4.5.2 to include language that the Transmission Provider will provide an interconnection agreement to the Interconnection Customer if the Interconnection Customer agrees to pay for the modifications to the Transmission Provider’s system, similar to the language in section 2.3.1 of the SGIP.”  
4. On page 73271, in the first column, footnote 449 is corrected to read as follows:  
“<sup>449</sup> NRECA, EEI & APPA at 29 (quoting the NOPR, FERC Stats. & Regs. ¶ 32,697 at P 1, n. 4) (emphasis added).  
5. On page 73288, the last sentence of the first paragraph in section 2.1 of Appendix C, Revisions to the *Pro Forma* SGIP, is corrected to read as follows:  
“However, Fast Track eligibility is distinct from the Fast Track Process itself, and eligibility does not imply or indicate that a Small Generating Facility will pass the Fast Track screens in section 2.2.1 below or the Supplemental Review screens in section 2.4.4 below.”  
6. On page 73293, the table in section 2.2.1.6 of Appendix C, Revisions to the *Pro Forma* SGIP, is corrected to read as follows:

| Primary distribution line type | Type of interconnection to primary distribution line           | Result/criteria |
|--------------------------------|----------------------------------------------------------------|-----------------|
| Three-phase, three wire .....  | 3-phase or single phase, phase-to-phase .....                  | Pass screen.    |
| Three-phase, four wire .....   | Effectively-grounded 3 phase or Single-phase, line-to-neutral. | Pass screen.    |

7. On page 73297, the first sentence of section 2.4.4.1.1 of Appendix C, Revisions to the *Pro Forma* SGIP is corrected to read as follows:  
“The type of generation used by the proposed Small Generating Facility will be taken into account when calculating, estimating, or determining circuit or line section minimum load relevant for the application of screen 2.4.4.1.”  
8. On pages 73299 and 73300, sections 2.4.5.1, 2.4.5.2, and 2.4.5.3 of Appendix C, Revisions to the *Pro Forma* SGIP, are corrected to read as follows:  
“2.4.5.1 If the proposed interconnection passes the supplemental screens in sections 2.4.4.1, 2.4.4.2, and 2.4.4.3 above and does not require construction of facilities by the Transmission Provider on its own system, the interconnection agreement shall be provided within ten Business Days after the notification of the supplemental review results.

2.4.5.2 If interconnection facilities or minor modifications to the Transmission Provider’s system are required for the proposed interconnection to pass the supplemental screens in sections 2.4.4.1, 2.4.4.2, and 2.4.4.3 above, and the Interconnection Customer agrees to pay for the modifications to the Transmission Provider’s electric system, the interconnection agreement, along with a non-binding good faith estimate for the interconnection facilities and/or minor modifications, shall be provided to the Interconnection Customer within 15 Business Days after receiving written notification of the supplemental review results.  
2.4.5.3 If the proposed interconnection would require more than interconnection facilities or minor modifications to the Transmission Provider’s system to pass the supplemental screens in sections

2.4.4.1, 2.4.4.2, and 2.4.4.3 above, the Transmission Provider shall notify the Interconnection Customer, at the same time it notifies the Interconnection Customer with the supplemental review results, that the Interconnection Request shall be evaluated under the section 3 Study Process unless the Interconnection Customer withdraws its Small Generating Facility.”  
9. On page 73349, Section 10.0 of Attachment 8 (Facilities Study Agreement) to Appendix C, Revisions to the *Pro Forma* SGIP, is corrected to read as follows:  
“10.0 Within ten Business Days of providing a draft Interconnection Facilities Study report to Interconnection Customer, Transmission Provider and Interconnection Customer shall meet to discuss the results of the Interconnection Facilities Study.”

Dated: January 15, 2014.  
**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*  
 [FR Doc. 2014–01074 Filed 1–23–14; 8:45 am]  
**BILLING CODE 6717–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 31

[TD 9649]

RIN 1545–BI21

#### Section 3504 Agent Employment Tax Liability; Correction

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

**ACTION:** Final regulations; correction.

**SUMMARY:** This document contains corrections to final regulations (TD 9649) that were published in the **Federal Register** on Thursday, December 12, 2013 (78 FR 75471). The final regulations are relating to agents authorized by the secretary under section 3504 of the Internal Revenue Code to perform acts required of employers who are home care service recipients.

**DATES:** This correction is effective January 24, 2014 and applicable December 12, 2013.

**FOR FURTHER INFORMATION CONTACT:** Michelle R. Weigelt, at (202) 317–6798 (not a toll free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The final regulations (TD 9649) that are the subject of this correction is under section 3504 of the Internal Revenue Code.

##### Need for Correction

As published, the final regulations (TD 9649) contain errors that may prove to be misleading and are in need of clarification.

##### Correction of Publication

Accordingly, the final regulations (TD 9649), that are the subject of FR Doc. 2013–29664, published in the **Federal Register** on Thursday, December 12, 2013, are corrected as follows:

1. On page 75472, first column, in the preamble, under the caption “**FOR FURTHER INFORMATION CONTACT**”, first line, the language “Michelle R. Weigelt at (202) 622–0047” is corrected to read

“Michelle R. Weigelt at (202) 317–6798”.

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2014–01389 Filed 1–23–14; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2013–0034]

RIN 1625–AA87

#### Security Zone; North American International Auto Show; Detroit River, Detroit, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule; notice of enforcement of regulation.

**SUMMARY:** The Coast Guard is adding a permanent security zone, which will be enforced 2 weeks each year, on the Detroit River, Detroit, Michigan. This security zone is intended to restrict vessels from a portion of the Detroit River in order to ensure the safety and security of participants, visitors, and public officials at the Annual North American International Auto Show (NAIAS), which is held at Cobo Hall in downtown Detroit, MI.

**DATES:** This rule is effective without actual notice January 24, 2014. For the purposes of enforcement in 2014, actual notice will be used from 7 a.m. January 13, 2014, until 11:59 p.m. January 26, 2014. For 2014, the North American International Auto Show, Detroit River, Detroit, MI security zone described in 33 CFR 165.915(a)(3) will be enforced from 7 a.m. to 11:59 p.m. daily, from January 13, 2014, through January 26, 2014.

**ADDRESSES:** Documents mentioned in this preamble are part of docket number USCG–2013–0034. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on “Open Docket Folder” on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9508, email [Adrian.F.Palomeque@uscg.mil](mailto:Adrian.F.Palomeque@uscg.mil). If you have questions on viewing 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  
 TFR Temporary Final Rule  
 NAD 83 North American Datum 1983

#### A. Regulatory History and Information

On March 29, 2013, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Security Zones; Captain of the Port Detroit in the **Federal Register** (78 FR 19161). No comments were received in response to the March 29, 2013 publication in the **Federal Register**; a public meeting was not requested, and no public meetings were held.

In addition to the aforementioned NPRM, the Coast Guard had published multiple temporary final rules (TFRs) in the past in response to the Annual North American International Auto Show (NAIAS), annually establishing a temporary security zone to protect participants and spectators associated with the NAIAS. Because this event will likely continue to recur annually, the Captain of the Port Detroit is establishing a permanent security zone, thus alleviating the need to publish annual TFRs in the future.

#### B. Basis and Purpose

For two weeks in the month of January, the Annual North American International Auto Show will be held at Cobo Hall in downtown Detroit, MI. The NAIAS is the prime venue for introducing the world's most anticipated vehicles. In 2013, the NAIAS attendance for the public showing was nearly 800,000 people and press preview days attracted over 5,000 journalists representing 62 countries. Attendance and participation at the 2012 and 2011 NAIAS events were similar, and the attendance and participation at future NAIAS events is anticipated to be similar too.

In years past, NAIAS has attracted numerous protesters from various organizations due to the state of the economy, worker layoffs, and the closures of automotive dealerships

around the country. Because of the likely presence of high profile visitors at future NAIAS events, it is possible that protests may continue in subsequent years. Consequently, the Captain of the Port Detroit has determined that establishing a security zone in the vicinity of the NAIAS event is necessary to safeguard portions of the Detroit River from destruction, loss, or injury from sabotage or other subversive acts.

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

As stated previously, no comments were received in response to the NPRM published on March 29, 2013, and no public meetings were requested or held. We made no changes from the proposed rule in the NPRM.

As for the actual rule itself, the Captain of the Port Detroit has determined that establishing this permanent security zone is necessary to safeguard portions of the Detroit River during NAIAS events. Thus, the Coast Guard is amending 33 CFR 165.915 by adding paragraph (a)(3), which will establish a permanent security zone. The security zone will be enforced for the duration of the event and will encompass an area of the Detroit River beginning at a point of origin on land adjacent to the west end of Joe Lewis Arena at 42°19.44' N, 083°03.11' W; then extending offshore approximately 150 yards to 42°19.39' N, 083°03.07' W; then proceeding upriver approximately 2000 yards to a point at 42°19.72' N, 083°01.88' W; then proceeding onshore to a point on land adjacent the Tricentennial State Park at 42°19.79' N, 083°01.90' W; then proceeding downriver along the shoreline to connect back to the point of origin (NAD 83). Vessels in close proximity to the security zone will be subject to increased monitoring and boarding. The precise times and dates of enforcement for this security zone will be determined and published annually.

This final rule references an annual notice of enforcement that will announce the exact dates for the 2 weeks in January that the security zone will be enforced. See 33 CFR 165.915 (a)(3). For 2014, the North American International Auto Show, Detroit River, Detroit, MI security zone will be enforced from 7 a.m. to 11:59 p.m. daily, from January 13, 2014, through 26, 2014.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene representative. Entry into, transit, or anchoring within the security zone is prohibited unless authorized by the Captain of the Port Detroit or his

designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

The Captain of the Port will use all appropriate means to notify the public when the security zone in this rule will be enforced. Such means may include, among other things, publication in the **Federal Register**, Broadcast Notice to Mariners, Local Notice to Mariners, or, upon request, by facsimile (fax). Also, the Captain of the Port will issue a Broadcast Notice to Mariners notifying the public if enforcement of the affected area in this section is cancelled prematurely.

### D. Regulatory Analyses

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

#### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The security zone created by this rule will be relatively small and enforced for relatively short time. Also, the security zone is designed to minimize its impact on navigable waters. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the security zone when permitted by the Captain of the Port.

#### 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a

significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the previously mentioned portion of the Detroit River, Detroit, MI between 8 a.m. and midnight on the dates of the event, which will be determined annually. The security zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will not obstruct the regular flow of commercial traffic and will allow vessel traffic to pass around the security zone. In the event that this security zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the security zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

#### 3. Assistance for Small Entities

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

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

#### 4. Collection of Information

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

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

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

#### 8. Taking of Private Property

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

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

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

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

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

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.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 rule involves the establishment of a security zone and is therefore, categorically excluded under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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

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

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

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

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapters 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 § 165.915 by adding paragraph (a)(3) to read as follows:

**§ 165.915 Security zones; Captain of the Port Detroit.**

(a) \* \* \*

(3) *North American International Auto Show, Detroit River, Detroit, MI.* All waters of the Detroit River encompassed by a line beginning at a point of origin on land adjacent to the west end of Joe Lewis Arena at 42°19.44' N, 083°03.11' W; then extending offshore approximately 150 yards to 42°19.39' N, 083°03.07' W; then proceeding upriver approximately 2000 yards to a point at 42°19.72' N, 083°01.88' W; then proceeding onshore to a point on land adjacent to the Tricentennial State Park at 42°19.79' N, 083°01.90' W; then proceeding downriver along the shoreline to connect back to the point of origin on land adjacent to the west end of the Joe Louis Arena (NAD 83). This security zone will be enforced for two weeks in the month of January with the exact dates and times to be published annually via a Notice of Enforcement.

\* \* \* \* \*

Dated: January 10, 2014.

**J. E. Ogden,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Detroit.*

[FR Doc. 2014–01290 Filed 1–23–14; 8:45 am]

**BILLING CODE 9110–04–P**

#### POSTAL SERVICE

#### 39 CFR Part 121

#### Revised Service Standards for Market-Dominant Mail Products; Postponement of Implementation Date

**AGENCY:** Postal Service™.

**ACTION:** Final rule; postponement of implementation date.

**SUMMARY:** This document announces the postponement of the implementation date for the revised service standards for market-dominant mail products that were scheduled to take effect on February 1, 2014, as part of the Network Rationalization initiative. The new implementation date will be announced by the Postal Service in the **Federal Register** at least 90 days before it takes effect.

**DATES:** *Effective date:* January 24, 2014. Please see **SUPPLEMENTARY INFORMATION** concerning postponement of implementation date.

**FOR FURTHER INFORMATION CONTACT:** Dave Williams, Network Operations, at 202–268–4305.

#### SUPPLEMENTARY INFORMATION:

On September 21, 2011, the Postal Service published an advance notice of proposed rulemaking (the Advance Notice) in the **Federal Register** to solicit public comment on a conceptual

proposal to revise service standards for market-dominant products.<sup>1</sup> After considering comments received in response to the Advance Notice, the Postal Service determined to develop the concept into a concrete proposal, termed Network Rationalization. The basic logic of Network Rationalization is that falling mail volumes and the resultant excess capacity in the Postal Service's mail processing network necessitate a major consolidation of the network, and this task in turn is contingent on revisions to service standards, particularly the overnight standard for First-Class Mail.

On December 5, 2011, the Postal Service submitted a request to the Postal Regulatory Commission (PRC) for an advisory opinion on the service changes associated with Network Rationalization, in accordance with 39 U.S.C. 3661(b).<sup>2</sup> On December 15, 2011, the Postal Service published proposed revisions to its market-dominant service standards in the **Federal Register** and sought public comment (the Proposed Rulemaking).<sup>3</sup> The comment period for the Proposed Rulemaking closed on February 13, 2012. The final rule was published on May 25, 2012.<sup>4</sup>

Having considered public input and the results of its market research, the Postal Service decided to implement Network Rationalization in a phased manner. The service standard changes associated with the first phase of Network Rationalization became effective on July 1, 2012.<sup>5</sup> This document announces the Postal Service's decision to postpone the second phase of Network Rationalization, and the corresponding service standard changes.

The Postal Service's market-dominant service standards are contained in 39 CFR part 121. This document revises the service standards by announcing the postponement of the implementation date for the service standards scheduled to become effective on February 1, 2014, and establishing the continuation of service standards currently in effect. This revision is applied by replacing "February 1, 2014" with "the effective date identified by the Postal Service in a future **Federal Register** document"

each place where "February 1, 2014" appears in the current version of 39 CFR part 121, and in Appendix A to that part.

#### List of Subjects in 39 CFR Part 121

Administrative practice and procedure, Postal Service.

Accordingly, for the reasons stated in the preamble, the Postal Service adopts the following revisions to 39 CFR part 121:

#### PART 121—SERVICE STANDARDS FOR MARKET DOMINANT MAIL PRODUCTS

- 1. The authority citation for 39 CFR part 121 continues to read as follows:

**Authority:** 39 U.S.C. 101, 401, 403, 404, 1001, 3691.

- 2. Section 121.1 is amended by revising paragraphs (a) and (b) to read as follows:

##### § 121.1 First-Class Mail.

(a)(1) Until the effective date identified by the Postal Service in a future **Federal Register** document, a 1-day (overnight) service standard is applied to intra-Sectional Center Facility (SCF) domestic First-Class Mail® pieces properly accepted before the day-zero Critical Entry Time (CET), except for mail between Puerto Rico and the U.S. Virgin Islands, mail between American Samoa and Hawaii, and mail destined to the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(2) On and after the effective date identified by the Postal Service in a future **Federal Register** document, a 1-day (overnight) service standard is applied to intra-SCF domestic Presort First-Class Mail pieces properly accepted at the SCF before the day-zero CET, except for mail between Puerto Rico and the U.S. Virgin Islands, and mail destined to American Samoa and the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(b)(1) Until the effective date identified by the Postal Service in a future **Federal Register** document, a 2-day service standard is applied to inter-SCF domestic First-Class Mail pieces properly accepted before the day-zero CET if the drive time between the origin Processing & Distribution Center or Facility (P&DC/F) and destination Area Distribution Center (ADC) is 6 hours or less; or if the origin and destination are separately in Puerto Rico and the U.S. Virgin Islands; or if the origin or

destination is in American Samoa or one of the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(2) On and after the effective date identified by the Postal Service in a future **Federal Register** document, a 2-day service standard is applied to inter-SCF domestic First-Class Mail pieces properly accepted before the day-zero CET if the drive time between the origin P&DC/F and destination SCF is 6 hours or less; or if the origin and destination are separately in Puerto Rico and the U.S. Virgin Islands; or if the origin or destination is in American Samoa or one of the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

\* \* \* \* \*

- 3. Section 121.2 is amended by revising paragraph (a)(1) to read as follows:

##### § 121.2 Periodicals.

(a) *End-to-End.*

(1)(i) Until the effective date identified by the Postal Service in a future **Federal Register** document, a 2-to 4-day service standard is applied to Periodicals pieces properly accepted before the day-zero Critical Entry Time (CET) and merged with First-Class Mail pieces for surface transportation (as per the Domestic Mail Manual (DMM)), with the standard specifically equaling the sum of 1 day plus the applicable First-Class Mail service standard;

(ii) On and after the effective date identified by the Postal Service in a future **Federal Register** document, a 3-to 4-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET and merged with First-Class Mail pieces for surface transportation (as per the DMM), with the standard specifically equaling the sum of 1 day plus the applicable First-Class Mail service standard.

\* \* \* \* \*

- 4. Appendix A to Part 121 is amended by revising the introductory text and Tables 1 through 4 to read as follows:

#### Appendix A to Part 121—Tables Depicting Service Standard Day Ranges

The following tables reflect the service standard day ranges resulting from the application of the business rules applicable to the market-dominant mail products referenced in §§ 121.1 through 121.4:

Table 1. Prior to the effective date identified by the Postal Service in a future **Federal Register** document, end-to-end service standard day ranges for mail originating and destinating within the

<sup>1</sup> Proposal to Revise Service Standards for First-Class Mail, Periodicals, and Standard Mail, 76 FR 58433 (Sept. 21, 2011).

<sup>2</sup> PRC Docket No. N2012-1, Request of the United States Postal Service for an Advisory Opinion on Changes in the Nature of Postal Services (Dec. 5, 2011). Documents pertaining to the Request are available at the PRC Web site, <http://www.prc.gov>.

<sup>3</sup> Service Standards for Market-Dominant Mail Products, 76 FR 77942 (Dec. 15, 2011).

<sup>4</sup> Revised Service Standards for Market-Dominant Mail Products, 77 FR 31190 (May 25, 2012).

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

contiguous 48 states and the District of Columbia.

### CONTIGUOUS UNITED STATES

| Mail class             | End-to-end range (days) |
|------------------------|-------------------------|
| First-Class Mail ..... | 1-3                     |
| Periodicals .....      | 2-9                     |
| Standard Mail .....    | 3-10                    |
| Package Services ..... | 2-8                     |

Table 2. On and after the effective date identified by the Postal Service in a future

**Federal Register** document, end-to-end service standard day ranges for mail originating and designating within the contiguous 48 states and the District of Columbia.

### CONTIGUOUS UNITED STATES

| Mail class             | End-to-end range (days) |
|------------------------|-------------------------|
| First-Class Mail ..... | 1-3                     |
| Periodicals .....      | 3-9                     |
| Standard Mail .....    | 3-10                    |

### CONTIGUOUS UNITED STATES—Continued

| Mail class             | End-to-end range (days) |
|------------------------|-------------------------|
| Package Services ..... | 2-8                     |

Table 3. Prior to the effective date identified by the Postal Service in a future **Federal Register** document, end-to-end service standard day ranges for mail originating and/or designating in non-contiguous states and territories.

### NON-CONTIGUOUS STATES AND TERRITORIES

| Mail class             | End-to-end            |                               |                    |                              |                                |                    |                                                                                                           |                                |                    |
|------------------------|-----------------------|-------------------------------|--------------------|------------------------------|--------------------------------|--------------------|-----------------------------------------------------------------------------------------------------------|--------------------------------|--------------------|
|                        | Intra state/territory |                               |                    | To/from contiguous 48 states |                                |                    | To/from states of Alaska and Hawaii, and the territories of Guam, Puerto Rico and the U.S. Virgin Islands |                                |                    |
|                        | Alaska                | Hawaii, Guam & American Samoa | Puerto Rico & USVI | Alaska                       | Hawaii, Guam, & American Samoa | Puerto Rico & USVI | Alaska                                                                                                    | Hawaii, Guam, & American Samoa | Puerto Rico & USVI |
| First-Class Mail ..... | 1-3                   | 1-3                           | 1-2                | 3-4                          | 3-5                            | 3-4                | 4-5                                                                                                       | 4-5                            | 4-5                |
| Periodicals .....      | 2-4                   | 2-4                           | 2-3                | 13-19                        | 12-22                          | 11-16              | 21-25                                                                                                     | 21-26                          | 23-26              |
| Standard Mail .....    | 3-5                   | 3-5                           | 3-4                | 14-20                        | 13-23                          | 12-17              | 23-26                                                                                                     | 23-27                          | 24-27              |
| Package Services ..... | * 2-4                 | 2-4                           | 2-3                | 12-18                        | 11-21                          | 10-15              | 21-26                                                                                                     | 20-26                          | 20-24              |

\* Excluding bypass mail.

Table 4. On and after the effective date identified by the Postal Service in a future

**Federal Register** document, end-to-end service standard day ranges for mail

originating and/or designating in non-contiguous states and territories.

### NON-CONTIGUOUS STATES AND TERRITORIES

| Mail class             | End-to-end            |                               |                    |                              |                                |                    |                                                                                                           |                                |                    |
|------------------------|-----------------------|-------------------------------|--------------------|------------------------------|--------------------------------|--------------------|-----------------------------------------------------------------------------------------------------------|--------------------------------|--------------------|
|                        | Intra state/territory |                               |                    | To/from contiguous 48 states |                                |                    | To/from states of Alaska and Hawaii, and the territories of Guam, Puerto Rico and the U.S. Virgin Islands |                                |                    |
|                        | Alaska                | Hawaii, Guam & American Samoa | Puerto Rico & USVI | Alaska                       | Hawaii, Guam, & American Samoa | Puerto Rico & USVI | Alaska                                                                                                    | Hawaii, Guam, & American Samoa | Puerto Rico & USVI |
| First-Class Mail ..... | 1-3                   | 1-3                           | 1-2                | 3-4                          | 3-5                            | 3-4                | 4-5                                                                                                       | 4-5                            | 4-5                |
| Periodicals .....      | 3-4                   | 3-4                           | 3                  | 13-19                        | 12-22                          | 11-16              | 21-25                                                                                                     | 21-26                          | 23-26              |
| Standard Mail .....    | 3-5                   | 3-5                           | 3-4                | 14-20                        | 13-23                          | 12-17              | 23-26                                                                                                     | 23-27                          | 24-27              |
| Package Services ..... | * 2-4                 | 2-4                           | 2-3                | 12-18                        | 11-21                          | 10-15              | 21-26                                                                                                     | 20-26                          | 20-24              |

\* Excluding bypass mail.

\* \* \* \* \*

**Stanley F. Mires,***Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2014-01382 Filed 1-23-14; 8:45 am]

BILLING CODE 7710-12-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[EPA-R04-OAR-2013-0562; FRL-9905-70-Region-4]****Approval and Promulgation of Implementation Plans; North Carolina: Non-Interference Demonstration for Removal of Federal Low-Reid Vapor Pressure Requirement for the Greensboro/Winston-Salem/High Point Area****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the State of North Carolina's April 12, 2013, State Implementation Plan (SIP) revision to its approved maintenance plan for the Greensboro/Winston-Salem/High Point 1997 8-hour Ozone Maintenance Area (Triad). Specifically, North Carolina's SIP revision, including updated modeling, shows that the Triad Area would continue to maintain the 1997 8-hour ozone standard if the currently applicable Federal Reid Vapor Pressure (RVP) standard for gasoline of 7.8 pounds per square inch (psi) were modified to 9.0 psi for four portions (Davidson, Forsyth, Guilford and Davie Counties) of the "Triad Area" during the high-ozone season. The State has included a technical demonstration with the SIP revision to demonstrate that a less-stringent RVP standard of 9.0 psi in these portions of this area would not interfere with continued maintenance of the 1997 8-hour ozone national ambient air quality standards (NAAQS) or any other applicable standard. Approval of this SIP revision is a prerequisite for EPA's consideration of an amendment to the regulations to remove the aforementioned portions of the Triad Area from the list of areas that are currently subject to the Federal 7.8 psi RVP requirements. In addition, the revised on-road mobile and non-road mobile source emissions modeling associated with the requested modification to the RVP standard utilizes the updated Motor Vehicle Emissions Simulator (MOVES) and NONROAD2008 models which are the most current versions of modeling

systems available for these sources. EPA has determined that North Carolina's April 12, 2013, SIP revision with respect to the revisions to the modeling and associated technical demonstration associated with the State's request for the removal of the Federal 7.8 psi RVP requirements, and with respect to the updated on-road mobile, non-road mobile and area source emissions, is consistent with the applicable provisions of the Clean Air Act (CAA or Act). Should EPA decide to remove the subject portions of the Triad Area from those areas subject to the 7.8 psi Federal RVP requirements, such action will occur in a subsequent rulemaking.

**DATES:** This rule will be effective on February 24, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2013-0562. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can be reached via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. Background of the Triad Area
- II. Background of the Gasoline Volatility Requirement
- III. This Action
- IV. Final Action

**V. Statutory and Executive Order Reviews****I. Background of the Triad Area**

On November 6, 1991 (56 FR 56694), EPA designated the Counties of Davidson, Forsyth and Guilford in their entirety and the portion of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in the Triad Area as moderate nonattainment for the 1-hour ozone NAAQS. Among the requirements applicable to nonattainment areas for the 1-hour ozone NAAQS was the requirement to meet certain volatility standards (known as Reid Vapor Pressure or RVP) for gasoline sold commercially. See 55 FR 23658 (June 11, 1990). As discussed in greater detail below, as part of the RVP requirements associated with the nonattainment designation, gasoline sold in the Triad 1-hour ozone nonattainment area could not exceed 7.8 psi RVP during the high-ozone season months.

Following implementation of the 7.8 psi RVP requirement in the Triad Area, on September 9, 1993, the Triad Area was redesignated to attainment for the 1-hour ozone NAAQS, based on 1989-1992 ambient air quality monitoring data. See 58 FR 47391. North Carolina's November 13, 1992, 1-hour ozone redesignation request did not include a request for the removal of the 7.8 psi RVP standard. The requirements remained in place for the Area when it was designated nonattainment for the 1997 8-hour ozone NAAQS that was promulgated on July 18, 1997, and later designated attainment for the 2008 8-hour ozone NAAQS that was promulgated March 12, 2008. See 77 FR 30088 (May 21, 2012).

On April 30, 2004, EPA designated and classified areas for the 1997 8-hour ozone NAAQS (69 FR 23857) unclassifiable/attainment or nonattainment for the new 8-hour ozone NAAQS. The Triad Area was designated as nonattainment with a deferred effective date as part of the Early Action Compact (EAC)<sup>1</sup> program. (For more information on the EAC program, see, [http://www.epa.gov/airquality/eac/fs20080331\\_eac.html](http://www.epa.gov/airquality/eac/fs20080331_eac.html).) The Greensboro-Winston Salem-High Point nonattainment-deferred EAC Area for the 1997 8-hour ozone NAAQS expanded the Triad Area to include the entire county of Davie, and Alamance,

<sup>1</sup> An EAC is an agreement between a State, local governments and EPA to implement measures not necessarily required by the Act in order to achieve cleaner air as soon as possible. The program was designed for areas that approach or monitor exceedances of the 8-hour ozone standard, but are in attainment for the 1-hour ozone NAAQS.



Caswell, Randolph, and Rockingham Counties in their entirety. The Greensboro-Winston Salem-High Point EAC Area attained the 1997 8-hour ozone NAAQS with a design value of 0.083 parts per million (ppm) using three years of quality assured data for the years of 2005–2007. On February 6, 2008, EPA proposed that 13 nonattainment areas with deferred effective dates, including the Greensboro-Winston Salem-High Point Area, be designated attainment for the 1997 8-hour ozone NAAQS. *See* 73 FR 6863. These areas met all of the milestones of the EAC program and demonstrated that they were in attainment of the 1997 8-hour ozone NAAQS as of December 31, 2007. This rulemaking was finalized on April 2, 2008. *See* 73 FR 17897. Effective April 15, 2008, the Greensboro-Winston Salem-High Point EAC Area was designated as attainment for the 1997 8-hour ozone NAAQS. However, these attainment areas were required to submit a 10-year maintenance plan under section 110(a)(1) of the CAA. As required, these plans provide for continued attainment and maintenance of the 1997 8-hour ozone NAAQS for at least 10 years from the effective date of these areas' designation as attainment for the 1997 8-hour ozone NAAQS. These plans also include components illustrating how each area will continue to attain the 1997 8-hour ozone NAAQS and provided contingency measures.

## II. Background of the Gasoline Volatility Requirement

On August 19, 1987 (52 FR 31274), EPA determined that gasoline nationwide had become increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment. Evaporative emissions from gasoline, referred to as volatile organic compounds (VOC), are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Exposure to ground-level ozone can reduce lung function (thereby aggravating asthma or other respiratory conditions), increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is RVP. Under section 211(c) of CAA, EPA promulgated regulations on March 22, 1989 (54 FR 11868), that set maximum limits for the RVP of gasoline sold during the high ozone season. These regulations constituted Phase I of a two-phase nationwide program, which was

designed to reduce the volatility of commercial gasoline during the summer ozone control season. On June 11, 1990 (55 FR 23658), EPA promulgated more stringent volatility controls as Phase II of the volatility control program. These requirements established maximum RVP standards of 9.0 psi or 7.8 psi (depending on the State, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone NAAQS during the high ozone season).

The 1990 CAA Amendments established a new section, 211(h), to address fuel volatility. Section 211(h) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. Section 211(h) prohibits EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that EPA may impose a lower (more stringent) standard in any former ozone nonattainment area redesignated to attainment.

On December 12, 1991 (56 FR 64704), EPA modified the Phase II volatility regulations to be consistent with section 211(h) of the CAA. The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, beginning in 1992. For areas designated as nonattainment, the regulations were retained as contained in the original Phase II Rule published on June 11, 1990 (55 FR 23658).

As stated in the preamble to the Phase II volatility controls and reiterated in the proposed change to the volatility standards published in 1991, EPA will rely on states to initiate changes to EPA's volatility program that they believe will enhance local air quality and/or increase the economic efficiency of the program within the statutory limits.<sup>2</sup> In those rulemakings, EPA explained that the governor of a state may petition EPA to set a volatility standard less stringent than 7.8 psi for some month or months in a nonattainment area. The petition must demonstrate such a change is appropriate because of a particular local economic impact and that sufficient alternative programs are available to achieve attainment and maintenance of the 1-hour ozone NAAQS. A current listing of the RVP requirements for states can be found on EPA's Web site

at: <http://www.epa.gov/otaq/fuels/gasolinefuels/volatility/standards.htm>.

As explained in the December 12, 1991 (56 FR 64704), Phase II rulemaking, EPA believes that relaxation of an applicable RVP standard is best accomplished in conjunction with the redesignation process. As noted above, however, North Carolina did not request relaxation of the applicable 7.8 psi RVP standard when the Triad Area was redesignated to attainment for the either the 1-hour or the 1997 8-hour ozone NAAQS. Rather, North Carolina is now seeking to relax the 7.8 psi RVP standard after the Triad Area has been redesignated to attainment for the 1997 8-hour ozone NAAQS. Accordingly, the original modeling and maintenance demonstration supporting the 1997 8-hour ozone maintenance plan must be revised to reflect continued attainment under the relaxed 9.0 psi RVP standard that the State has requested.

## III. This Action

On November 26, 2013 (78 FR 70516), EPA proposed approval of North Carolina's April 12, 2013, revision to the State's approved 1997 8-hour ozone maintenance plan for the Triad area. Specifically, North Carolina's revision, including updated modeling, shows that the Triad Area would continue to maintain the 1997 8-hour ozone standard if the currently applicable RVP standard for gasoline from 7.8 psi were modified to 9.0 psi during the high-ozone season. In addition, the revised on-road mobile and non-road mobile source emissions modeling associated with the requested modification to the RVP standard results in the use of the updated Motor Vehicle Emissions Simulator (MOVES) and NONROAD2008 models which are the most current versions of modeling systems available for these sources. No adverse comments and one supportive comment were received on this proposed action.<sup>3</sup> EPA is hereby finalizing approval of the revision.

This rulemaking approves a revision to the 1997 8-hour ozone Maintenance Plan for the Triad Area submitted by the

<sup>2</sup> See 55 FR 23658 (June 11, 1990), 56 FR 24242 (May 29, 1991) and 56 FR 64704 (Dec. 12, 1991).

<sup>3</sup> EPA notes that the supportive comment also requested that any separate action to remove the Triad Area from those areas subject to the more stringent 7.8 psi RVP requirements be done through a direct final rulemaking action. As described in the proposed rule for today's action, and reiterated in this final rule, any action to remove the Triad Area from the more stringent 7.8 psi RVP requirements will be done through a separate action. Any comments regarding that separate action should be submitted in response to such action. EPA does not view this request as relevant to today's action approving revisions to the Triad Area 110(a)(1) maintenance plan.

NC DENR. Specifically, EPA is approving changes to the maintenance plan, including updated modeling that shows that the Triad Area can continue to maintain the 1997 ozone standard without reliance on emission reductions based upon the use of gasoline with an RVP of 7.8 psi in any of the Triad Area counties during the high ozone season—June 1 through September 15. EPA is also concluding that the new modeling demonstrates that the area would continue to attain the 1997 8-hour ozone standard with the use of gasoline with an RVP of 9.0 psi throughout the Triad Area during the high ozone season. Consistent with section 110(l) of the Act, EPA also concludes that the use of gasoline with an RVP of 9.0 psi throughout the Maintenance Plan Areas during the high ozone season would not interfere with other applicable requirements of the Act.

Section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) (as defined in section 171), or any other applicable requirement of the Act. To determine the approvability of North Carolina's April 12, 2013, SIP revision, EPA considers whether the requested action complies with section 110(l) of the CAA. Because the modeling associated with the current maintenance plan for North Carolina is premised in part upon the 7.8 psi RVP requirements, a request to revise the maintenance plan modeling to no longer rely on the 7.8 psi RVP requirement is subject to the requirements of CAA section 110(l). Therefore, the State must demonstrate that this revision will not interfere with the attainment or maintenance of any of the NAAQS or any other applicable requirement of the CAA.

This section 110(l) non-interference demonstration is a case-by-case determination based upon the circumstances of each SIP revision. EPA interprets 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated but for which the EPA has not yet made designations. The specific elements of the 110(l) analysis contained in the SIP revision depend on the circumstances and emissions analyses associated with that revision. EPA's analysis of North Carolina's April 12, 2013, SIP revision, including review of section 110(l) requirements can be found in the proposed rule published on November 26, 2013, at 78 FR 70516.

This rulemaking is only approving the State's revision to its existing maintenance plan for the Triad Area showing that the area can continue to

maintain the standard without relying upon gasoline with an RVP of 7.8 psi being sold in the Triad Area during the high ozone season.

#### IV. Final Action

EPA is approving the State of North Carolina's April 12, 2013, revision to its 110(a)(1) Maintenance Plan for the Triad 1997 8-hour Ozone Maintenance Area. Specifically, EPA is approving the State's showing that the Triad Area can continue to maintain the 1997 ozone standard without emissions reductions associated with the use of gasoline with an RVP of 7.8 psi in the four Triad Area counties during the high ozone season—June 1 through September 15.

In addition, EPA is approving an updated on-road mobile, non-road mobile and area source emissions for the Triad Area. EPA has determined that North Carolina's April 12, 2013, SIP revision, including the technical demonstration associated with the State's request for the removal of the Federal RVP requirements, and the updated on-road mobile, non-road mobile and area source emissions are consistent with the applicable provisions of the CAA. Should EPA decide to remove subject portions of the Triad Area from those areas subject to the 7.8 psi Federal RVP requirements, such action will occur in a separate, subsequent rulemaking.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submittal that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, October 7, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not

be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Reporting and recordkeeping requirements and Volatile organic compounds.

Dated: January 10, 2014.  
A. Stanley Meiburg,  
Acting Regional Administrator, Region 4.  
40 CFR part 52, is amended as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

#### Subpart II—North Carolina

■ 2. Section 52.1770(e) is amended by adding a new entry for “Supplement Maintenance Plan for the Greensboro/Winston-Salem/High Point Area, NC 1997 8-hour Ozone Maintenance Area and RVP Standard.” at the end of the table to read as follows:

#### § 52.1770 Identification of plan.

\* \* \* \* \*  
(e) \* \* \*

#### EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

| Provision                                                                                                                             | State effective date | EPA approval date | Federal Register citation         | Explanation |
|---------------------------------------------------------------------------------------------------------------------------------------|----------------------|-------------------|-----------------------------------|-------------|
| * * *                                                                                                                                 | *                    | *                 | *                                 | *           |
| Supplement Maintenance Plan for the Greensboro/Winston-Salem/High Point Area, NC 1997 8-hour Ozone Maintenance Area and RVP Standard. | 4/2/2013             | 1/24/2014         | [Insert citation of publication]. |             |

[FR Doc. 2014–01330 Filed 1–23–14; 8:45 am]

BILLING CODE 6560–50–P

#### DEPARTMENT OF HOMELAND SECURITY

#### Federal Emergency Management Agency

#### 44 CFR Part 64

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–8317]

#### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA’s Community Status Book (CSB). The CSB is available at <http://www.fema.gov/fema/csb.shtm>.

**DATES: Effective Dates:** The effective date of each community’s scheduled suspension is the third date (“Susp.”) listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR Part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is

published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA’s initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are

met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The

communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This rule meets the applicable standards of Executive Order 12988.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the

Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR Part 64 is amended as follows:

#### PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

#### § 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

| State and Location                             | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective Map date | Date Certain Federal assistance no longer available in SFHAs |
|------------------------------------------------|---------------|-----------------------------------------------------------------------------------|----------------------------|--------------------------------------------------------------|
| <b>Region III</b>                              |               |                                                                                   |                            |                                                              |
| Pennsylvania: Albion, Borough of, Erie County. | 422409        | July 24, 1975, Emerg; June 19, 1989, Reg; February 19, 2014, Susp.                | February 19, 2014.         | February 19, 2014.                                           |
| Amity, Township of, Erie County.               | 421360        | August 6, 1975, Emerg; November 4, 1988, Reg; February 19, 2014, Susp.            | ...do* .....               | Do.                                                          |
| Concord, Township of, Erie County.             | 422410        | January 27, 1976, Emerg; November 5, 1982, Reg; February 19, 2014, Susp.          | ...do .....                | Do.                                                          |
| Conneaut, Township of, Erie County.            | 421361        | July 9, 1979, Emerg; November 15, 1989, Reg; February 19, 2014, Susp.             | ...do .....                | Do.                                                          |
| Corry, City of, Erie County.                   | 420447        | July 11, 1973, Emerg; February 15, 1978, Reg; February 19, 2014, Susp.            | ...do .....                | Do.                                                          |
| Cranesville, Borough of, Erie County.          | 421356        | August 22, 1975, Emerg; June 19, 1989, Reg; February 19, 2014, Susp.              | ...do .....                | Do.                                                          |
| Edinboro, Borough of, Erie County.             | 420448        | January 21, 1975, Emerg; June 15, 1981, Reg; February 19, 2014, Susp.             | ...do .....                | Do.                                                          |
| Elgin, Borough of, Erie County.                | 422411        | October 14, 1975, Emerg; September 28, 1979, Reg; February 19, 2014, Susp.        | ...do .....                | Do.                                                          |
| Elk Creek, Township of, Erie County.           | 422412        | January 20, 1976, Emerg; June 19, 1989, Reg; February 19, 2014, Susp.             | ...do .....                | Do.                                                          |
| Erie, City of, Erie County.                    | 420449        | April 26, 1973, Emerg; March 1, 1979, Reg; February 19, 2014, Susp.               | ...do .....                | Do.                                                          |
| Fairview, Township of, Erie County.            | 420450        | September 10, 1973, Emerg; September 29, 1978, Reg; February 19, 2014, Susp.      | ...do .....                | Do.                                                          |
| Franklin, Township of, Erie County.            | 421362        | February 13, 1976, Emerg; October 1, 1986, Reg; February 19, 2014, Susp.          | ...do .....                | Do.                                                          |
| Girard, Borough of, Erie County.               | 422413        | July 18, 1975, Emerg; June 30, 1976, Reg; February 19, 2014, Susp.                | ...do .....                | Do.                                                          |
| Girard, Township of, Erie County.              | 421363        | August 20, 1975, Emerg; June 30, 1976, Reg; February 19, 2014, Susp.              | ...do .....                | Do.                                                          |
| Greene, Township of, Erie County.              | 421364        | February 13, 1976, Emerg; December 1, 1986, Reg; February 19, 2014, Susp.         | ...do .....                | Do.                                                          |
| Harborcreek, Township of, Erie County.         | 421144        | April 9, 1974, Emerg; September 17, 1980, Reg; February 19, 2014, Susp.           | ...do .....                | Do.                                                          |
| Lake City, Borough of, Erie County.            | 422414        | September 11, 1975, Emerg; June 30, 1976, Reg; February 19, 2014, Susp.           | ...do .....                | Do.                                                          |
| Lawrence Park, Township of, Erie County.       | 420451        | June 1, 1973, Emerg; September 29, 1978, Reg; February 19, 2014, Susp.            | ...do .....                | Do.                                                          |
| LeBoeuf, Township of, Erie County.             | 422415        | October 15, 1975, Emerg; May 15, 1984, Reg; February 19, 2014, Susp.              | ...do .....                | Do.                                                          |
| McKean, Borough of, Erie County.               | 422416        | November 5, 1973, Emerg; September 30, 1977, Reg; February 19, 2014, Susp.        | ...do .....                | Do.                                                          |
| McKean, Township of, Erie County.              | 422623        | April 2, 1975, Emerg; July 16, 1980, Reg; February 19, 2014, Susp.                | ...do .....                | Do.                                                          |

| State and Location                                       | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective Map date | Date Certain Federal assistance no longer available in SFHAs |
|----------------------------------------------------------|---------------|-----------------------------------------------------------------------------------|----------------------------|--------------------------------------------------------------|
| Mill Village, Borough of, Erie County.                   | 422417        | February 18, 1976, Emerg; May 19, 1981, Reg; February 19, 2014, Susp.             | ...do .....                | Do.                                                          |
| Millcreek, Township of, Erie County.                     | 420452        | April 16, 1973, Emerg; April 16, 1979, Reg; February 19, 2014, Susp.              | ...do .....                | Do.                                                          |
| North East, Borough of, Erie County.                     | 421359        | April 29, 1975, Emerg; February 4, 1981, Reg; February 19, 2014, Susp.            | ...do .....                | Do.                                                          |
| North East, Township of, Erie County.                    | 421368        | October 29, 1974, Emerg; May 19, 1981, Reg; February 19, 2014, Susp.              | ...do .....                | Do.                                                          |
| Springfield, Township of, Erie County.                   | 421369        | December 2, 1975, Emerg; December 1, 1982, Reg; February 19, 2014, Susp.          | ...do .....                | Do.                                                          |
| Summit, Township of, Erie County.                        | 422418        | October 15, 1975, Emerg; September 16, 1981, Reg; February 19, 2014, Susp.        | ...do .....                | Do.                                                          |
| Union, Township of, Erie County.                         | 421370        | February 18, 1976, Emerg; September 16, 1981, Reg; February 19, 2014, Susp.       | ...do .....                | Do.                                                          |
| Union City, Borough of, Erie County.                     | 420453        | April 16, 1974, Emerg; September 28, 1979, Reg; February 19, 2014, Susp.          | ...do .....                | Do.                                                          |
| Venango, Township of, Erie County.                       | 421371        | September 10, 1975, Emerg; September 30, 1981, Reg; February 19, 2014, Susp.      | ...do .....                | Do.                                                          |
| Washington, Township of, Erie County.                    | 421372        | June 5, 1975, Emerg; May 19, 1981, Reg; February 19, 2014, Susp.                  | ...do .....                | Do.                                                          |
| Waterford, Township of, Erie County.                     | 422419        | March 22, 1976, Emerg; February 17, 1982, Reg; February 19, 2014, Susp.           | ...do .....                | Do.                                                          |
| Wattsburg, Borough of, Erie County.                      | 420455        | November 11, 1975, Emerg; May 19, 1981, Reg; February 19, 2014, Susp.             | ...do .....                | Do.                                                          |
| Wayne, Township of, Erie County.                         | 421373        | March 6, 1975, Emerg; December 14, 1979, Reg; February 19, 2014, Susp.            | ...do .....                | Do.                                                          |
| Wesleyville, Borough of, Erie County.                    | 420456        | March 19, 1975, Emerg; July 16, 1981, Reg; February 19, 2014, Susp.               | ...do .....                | Do.                                                          |
| West Virginia: Barboursville, Village of, Cabell County. | 540017        | May 13, 1975, Emerg; June 3, 1988, Reg; February 19, 2014, Susp.                  | ...do .....                | Do.                                                          |
| Cabell County, Unincorporated Areas.                     | 540016        | May 3, 1976, Emerg; September 30, 1987, Reg; February 19, 2014, Susp.             | ...do .....                | Do.                                                          |
| Huntington, City of, Cabell and Wayne Counties.          | 540018        | September 27, 1973, Emerg; August 17, 1981, Reg; February 19, 2014, Susp.         | ...do .....                | Do.                                                          |

## Region IV

|                                                     |        |                                                                             |             |     |
|-----------------------------------------------------|--------|-----------------------------------------------------------------------------|-------------|-----|
| Florida: Daytona Beach, City of, Volusia County.    | 125099 | September 11, 1970, Emerg; September 7, 1973, Reg; February 19, 2014, Susp. | ...do ..... | Do. |
| Daytona Beach Shores, City of, Volusia County.      | 125100 | January 29, 1971, Emerg; September 7, 1973, Reg; February 19, 2014, Susp.   | ...do ..... | Do. |
| Debary, City of, Volusia County.                    | 120672 | May 14, 1971, Emerg; November 23, 1973, Reg; February 19, 2014, Susp.       | ...do ..... | Do. |
| Deland, City of, Volusia County.                    | 120307 | February 19, 1975, Emerg; December 22, 1980, Reg; February 19, 2014, Susp.  | ...do ..... | Do. |
| Deltona, City of, Volusia County.                   | 120677 | N/A, Emerg; January 22, 1998, Reg; February 19, 2014, Susp.                 | ...do ..... | Do. |
| Edgewater, City of, Volusia County.                 | 120308 | February 6, 1975, Emerg; September 3, 1980, Reg; February 19, 2014, Susp.   | ...do ..... | Do. |
| Flagler Beach, City of, Flagler and Volusia County. | 120087 | May 2, 1974, Emerg; May 15, 1985, Reg; February 19, 2014, Susp.             | ...do ..... | Do. |
| Holly Hill, City of, Volusia County.                | 125112 | May 14, 1971, Emerg; September 7, 1973, Reg; February 19, 2014, Susp.       | ...do ..... | Do. |
| Lake Helen, City of, Volusia County.                | 120674 | N/A, Emerg; May 19, 2005, Reg; February 19, 2014, Susp.                     | ...do ..... | Do. |
| New Smyrna Beach, City of, Volusia County.          | 125132 | May 14, 1971, Emerg; December 7, 1973, Reg; February 19, 2014, Susp.        | ...do ..... | Do. |
| Oak Hill, City of, Volusia County.                  | 120624 | N/A, Emerg; February 21, 1994, Reg; February 19, 2014, Susp.                | ...do ..... | Do. |
| Ormond Beach, City of, Volusia County.              | 125136 | November 20, 1970, Emerg; September 7, 1973, Reg; February 19, 2014, Susp.  | ...do ..... | Do. |
| Pierson, Town of, Volusia County.                   | 120675 | N/A, Emerg; July 18, 2007, Reg; February 19, 2014, Susp.                    | ...do ..... | Do. |
| Ponce Inlet, Town of, Volusia County.               | 120312 | May 28, 1974, Emerg; October 8, 1976, Reg; February 19, 2014, Susp.         | ...do ..... | Do. |
| Port Orange, City of, Volusia County.               | 120313 | July 19, 1974, Emerg; May 16, 1977, Reg; February 19, 2014, Susp.           | ...do ..... | Do. |
| South Daytona, City of, Volusia County.             | 120314 | June 18, 1971, Emerg; October 3, 1976, Reg; February 19, 2014, Susp.        | ...do ..... | Do. |

| State and Location                                      | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective Map date | Date Certain Federal assistance no longer available in SFHAs |
|---------------------------------------------------------|---------------|-----------------------------------------------------------------------------------|----------------------------|--------------------------------------------------------------|
| Volusia County, Unincorporated Areas.                   | 125155        | May 14, 1971, Emerg; November 23, 1973, Reg; February 19, 2014, Susp.             | ...do .....                | Do.                                                          |
| North Carolina: Charlotte, City of, Mecklenburg County. | 370159        | April 12, 1973, Emerg; August 15, 1978, Reg; February 19, 2014, Susp.             | ...do .....                | Do.                                                          |
| Indian Trail, Town of, Union County.                    | 370235        | June 14, 1976, Emerg; March 21, 1980, Reg; February 19, 2014, Susp.               | ...do .....                | Do.                                                          |
| Marvin, Village of, Union County.                       | 370514        | N/A, Emerg; December 28, 1998, Reg; February 19, 2014, Susp.                      | ...do .....                | Do.                                                          |
| Matthews, Town of, Mecklenburg County.                  | 370310        | January 11, 1995, Emerg; February 4, 2004, Reg; February 19, 2014, Susp.          | ...do .....                | Do.                                                          |
| Mecklenburg County, Unincorporated Areas.               | 370158        | May 17, 1973, Emerg; June 1, 1981, Reg; February 19, 2014, Susp.                  | ...do .....                | Do.                                                          |
| Mint Hill, Town of, Mecklenburg County.                 | 370539        | N/A, Emerg; December 21, 2007, Reg; February 19, 2014, Susp.                      | ...do .....                | Do.                                                          |
| Pineville, Town of, Mecklenburg County.                 | 370160        | May 6, 1975, Emerg; March 18, 1987, Reg; February 19, 2014, Susp.                 | ...do .....                | Do.                                                          |
| Stallings, Town of, Union County.                       | 370472        | N/A, Emerg; April 5, 1994, Reg; February 19, 2014, Susp.                          | ...do .....                | Do.                                                          |
| Union County, Unincorporated Areas.                     | 370234        | August 9, 1974, Emerg; July 18, 1983, Reg; February 19, 2014, Susp.               | ...do .....                | Do.                                                          |
| Weddington, Town of, Union County.                      | 370518        | N/A, Emerg; May 3, 1999, Reg; February 19, 2014, Susp.                            | ...do .....                | Do.                                                          |
| <b>Region V</b>                                         |               |                                                                                   |                            |                                                              |
| Michigan: Hillsdale, City of, Hillsdale County.         | 260086        | May 12, 1975, Emerg; January 6, 1988, Reg; February 19, 2014, Susp.               | ...do .....                | Do.                                                          |
| Litchfield, City of, Hillsdale County.                  | 260409        | July 25, 1975, Emerg; February 4, 1987, Reg; February 19, 2014, Susp.             | ...do .....                | Do.                                                          |
| Reading, Township of, Hillsdale County.                 | 260410        | March 27, 1996, Emerg; N/A, Reg; February 19, 2014, Susp.                         | ...do .....                | Do.                                                          |
| Wisconsin: Delafield, City of, Waukesha County.         | 550479        | July 15, 1975, Emerg; August 15, 1983, Reg; February 19, 2014, Susp.              | ...do .....                | Do.                                                          |
| Dousman, Village of, Waukesha County.                   | 550480        | June 30, 1975, Emerg; April 17, 1987, Reg; February 19, 2014, Susp.               | ...do .....                | Do.                                                          |
| Hartland, Village of, Waukesha County.                  | 550481        | July 25, 1975, Emerg; December 1, 1982, Reg; February 19, 2014, Susp.             | ...do .....                | Do.                                                          |
| Merton, Village of, Waukesha County.                    | 550484        | July 21, 1975, Emerg; August 3, 1989, Reg; February 19, 2014, Susp.               | ...do .....                | Do.                                                          |
| Nashotah, Village of, Waukesha County.                  | 550149        | N/A, Emerg; April 26, 2012, Reg; February 19, 2014, Susp.                         | ...do .....                | Do.                                                          |
| Oconomowoc, City of, Waukesha County.                   | 550488        | May 1, 1975, Emerg; September 1, 1983, Reg; February 19, 2014, Susp.              | ...do .....                | Do.                                                          |
| Sussex, Village of, Waukesha County.                    | 550490        | June 24, 1975, Emerg; June 19, 1989, Reg; February 19, 2014, Susp.                | ...do .....                | Do.                                                          |
| Waukesha County, Unincorporated Areas.                  | 550476        | May 25, 1973, Emerg; August 1, 1983, Reg; February 19, 2014, Susp.                | ...do .....                | Do.                                                          |
| <b>Region VIII</b>                                      |               |                                                                                   |                            |                                                              |
| Wyoming: Basin, Town of, Big Horn County.               | 560069        | June 30, 2000, Emerg; N/A, Reg; February 19, 2014, Susp.                          | ...do .....                | Do.                                                          |
| Big Horn County, Unincorporated Areas.                  | 560004        | April 4, 1997, Emerg; November 1, 1998, Reg; February 19, 2014, Susp.             | ...do .....                | Do.                                                          |
| Greybull, Town of, Big Horn County.                     | 560005        | March 16, 1978, Emerg; February 19, 1980, Reg; February 19, 2014, Susp.           | ...do .....                | Do.                                                          |
| Lovell, Town of, Big Horn County.                       | 560073        | August 30, 1976, Emerg; October 1, 1986, Reg; February 19, 2014, Susp.            | ...do .....                | Do.                                                          |
| Manderson, Town of, Big Horn County.                    | 560006        | April 29, 1976, Emerg; April 16, 1979, Reg; February 19, 2014, Susp.              | ...do .....                | Do.                                                          |
| <b>Region IX</b>                                        |               |                                                                                   |                            |                                                              |
| California: Campbell, City of, Santa Clara County.      | 060338        | July 25, 1974, Emerg; June 30, 1976, Reg; February 19, 2014, Susp.                | ...do .....                | Do.                                                          |
| Santa Clara County, Unincorporated Areas.               | 060337        | June 18, 1979, Emerg; August 2, 1982, Reg; February 19, 2014, Susp.               | ...do .....                | Do.                                                          |

\*...do = Ditto.

Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Suspension.

Dated: January 7, 2014.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014-01371 Filed 1-23-14; 8:45 am]

BILLING CODE 9110-12-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket ID FEMA-2013-0002]

#### Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

**ADDRESSES:** The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (email) [Luis.Rodriguez3@fema.dhs.gov](mailto:Luis.Rodriguez3@fema.dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

*National Environmental Policy Act.* This final rule is categorically excluded

from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

#### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

#### PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

#### § 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Modified | Communities affected |
|--------------------|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|----------------------|
|--------------------|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|----------------------|

#### Fort Bend County, Texas, and Incorporated Areas Docket Nos.: FEMA-B-1100 and B-1221

|                    |                                                                                      |             |                                                                                                                                                                                                                                                                 |
|--------------------|--------------------------------------------------------------------------------------|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Brazos River ..... | At the confluence with Cow Creek .....<br>At the Waller/Austin county boundary ..... | +51<br>+117 | City of Missouri.<br>City, City of Richmond, City of Rosenberg, City of Sugar Land, Fort Bend County L.I.D. #2, Fort Bend County L.I.D. #7, Pecan Grove M.U.D., Town of Thompsons, Unincorporated Areas of Fort Bend County, Village of Simonton, Weston Lakes. |
|--------------------|--------------------------------------------------------------------------------------|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| Flooding source(s)                                            | Location of referenced elevation                                | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Modified | Communities affected                                                                                                                                                                                                                      |
|---------------------------------------------------------------|-----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cane Island Branch .....                                      | Just upstream of the confluence with Willow Fork Buffalo Bayou. | +132                                                                                                                                | City of Katy.                                                                                                                                                                                                                             |
| Clear Creek .....                                             | Just upstream of I-10 .....                                     | +133                                                                                                                                | City of Houston, City of Pearland, Unincorporated Areas of Fort Bend County.                                                                                                                                                              |
|                                                               | Just downstream of FM 2234 .....                                | +60                                                                                                                                 |                                                                                                                                                                                                                                           |
| Keegans Bayou .....                                           | Just downstream of Rouen Road .....                             | +68                                                                                                                                 | West Keegans Bayou Improvement District.                                                                                                                                                                                                  |
|                                                               | Approximately 1,500 feet downstream of Hodges Bend Drive.       | +88                                                                                                                                 |                                                                                                                                                                                                                                           |
| Lower Oyster Creek .....                                      | Approximately 988 feet upstream of Hodges Bend Drive ..         | +88                                                                                                                                 | City of Arcola, City of Missouri City, Unincorporated Areas of Fort Bend County.                                                                                                                                                          |
|                                                               | At the confluence with Flat Bank Creek .....                    | +61                                                                                                                                 |                                                                                                                                                                                                                                           |
| Old Oyster Creek (Backwater Effects from Lower Oyster Creek). | Approximately 1,300 feet upstream of McKeever Road .....        | +64                                                                                                                                 | City of Missouri City, Unincorporated Areas of Fort Bend County.                                                                                                                                                                          |
|                                                               | Approximately 2000 feet downstream of Ellison Road .....        | +59                                                                                                                                 |                                                                                                                                                                                                                                           |
| Oyster Creek .....                                            | Just downstream of Watts Plantation Road .....                  | +60                                                                                                                                 | Unincorporated Areas of Fort Bend County, City of Missouri City, City of Sugar Land, First Colony L.I.D., Fort Bend County L.I.D. #2, Fort Bend County Municipal Utility District No. 25, Fort Bend County M.U.D. #42, Pecan Grove M.U.D. |
|                                                               | At the confluence with Flat Bottom Creek .....                  | +61                                                                                                                                 |                                                                                                                                                                                                                                           |
| Willow Fork Buffalo Bayou .....                               | At the confluence with Jones Creek .....                        | +85                                                                                                                                 | City of Houston, City of Katy, Unincorporated Areas of Fort Bend County, Willow Fork Drainage District.                                                                                                                                   |
|                                                               | At the Harris County boundary .....                             | +97                                                                                                                                 |                                                                                                                                                                                                                                           |
|                                                               | At the Waller County boundary .....                             | +147                                                                                                                                |                                                                                                                                                                                                                                           |

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

#### ADDRESSES

##### City of Arcola

Maps are available for inspection at 13222 State Highway 6, Arcola, TX 77583.

##### City of Houston

Maps are available for inspection at 3300 Main Street, Houston, TX 77002.

##### City of Katy

Maps are available for inspection at 910 Avenue C, Katy, TX 77492.

##### City of Missouri City

Maps are available for inspection at 1522 Texas Parkway, Missouri City, TX 77459.

##### City of Pearland

Maps are available for inspection at 3519 Liberty Drive, Pearland, TX 77581.

##### City of Richmond

Maps are available for inspection at 402 Morton Street, Richmond, TX 77469.

##### City of Rosenberg

Maps are available for inspection at 2110 4th Street, Rosenberg, TX 77471.

##### City of Sugar Land

Maps are available for inspection at 10405 Corporate Drive, Sugar Land, TX 77478.

##### First Colony L.I.D.

Maps are available for inspection at 2077 South Gessner Road, Suite 225, Houston, TX 77063.

##### Fort Bend County L.I.D. #2

Maps are available for inspection at 2929 Briarpark Drive, Suite 600, Houston, TX 77042.

##### Fort Bend County L.I.D. #7

Maps are available for inspection at 2929 Briarpark Drive, Suite 600, Houston, TX 77042.



| Flooding source(s)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Modified | Communities affected |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| <p><b>Fort Bend County Municipal Utility District No. 25</b><br/>Maps are available for inspection at 8522 Katy Freeway, Suite 300, Houston, TX 77024.</p> <p><b>Fort Bend County M.U.D. #42</b><br/>Maps are available for inspection at 6335 Gulfon Street, Suite 200, Houston, TX 77081.</p> <p><b>Pecan Grove M.U.D.</b><br/>Maps are available for inspection at 6335 Gulfon Street, Suite 200, Houston, TX 77081.</p> <p><b>Town of Thompsons</b><br/>Maps are available for inspection at 520 Thompson Oil Field Road, Thompsons, TX 77481.</p> <p><b>Unincorporated Areas of Fort Bend County</b><br/>Maps are available for inspection at 1124 Blume Road, Rosenberg, TX 77471.</p> <p><b>Village of Simonton</b><br/>Maps are available for inspection at 1104 Blume Road, Rosenberg, TX 77471.</p> <p><b>West Keegans Bayou Improvement District</b><br/>Maps are available for inspection at 5757 Woodway Drive, Houston, TX 77057.</p> <p><b>Weston Lakes</b><br/>Maps are available for inspection at 32611 FM 1093, Fulshear, TX 77441.</p> <p><b>Willow Fork Drainage District</b><br/>Maps are available for inspection at 5757 Woodway Drive, Houston, TX 77057.</p> |                                  |                                                                                                                                     |                      |

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Date: December 18, 2013.

**Roy E. Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2014-01374 Filed 1-23-14; 8:45 am]

**BILLING CODE 9110-12-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket ID FEMA-2013-0002]

#### Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

**ADDRESSES:** The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (email) [Luis.Rodriguez3@fema.dhs.gov](mailto:Luis.Rodriguez3@fema.dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain

management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

**PART 67—[AMENDED]**

■ 1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR,

1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.11 [Amended]**

■ 2. The tables published under the authority of § 67.11 are amended as follows:

| Flooding source(s)                                                               | Location of referenced elevation                                  | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Modified | Communities affected                                                                                                           |
|----------------------------------------------------------------------------------|-------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| <b>Rockland County, New York (All Jurisdictions)<br/>Docket No.: FEMA-B-1214</b> |                                                                   |                                                                                                                                     |                                                                                                                                |
| Demarest Kill .....                                                              | At the West Branch Hackensack River confluence.                   | +98                                                                                                                                 | Town of Clarkstown.                                                                                                            |
| East Branch Hackensack River.                                                    | At the upstream side of Little Tor Road .....                     | +247                                                                                                                                | Town of Clarkstown.                                                                                                            |
|                                                                                  | At the upstream side of Old Mill Road .....                       | +88                                                                                                                                 |                                                                                                                                |
|                                                                                  | Approximately 600 feet downstream of Rockland Lake.               | +151                                                                                                                                |                                                                                                                                |
| Golf Course Brook.                                                               |                                                                   |                                                                                                                                     |                                                                                                                                |
| Hackensack River .....                                                           | At the upstream side of Nottingham Drive .....                    | +326                                                                                                                                | Village of Montebello.                                                                                                         |
|                                                                                  | At the upstream side of Spook Rock Road .....                     | +492                                                                                                                                | Town of Clarkstown, Town of Orangetown.                                                                                        |
|                                                                                  | At the Town of Orangetown/Town of Clarkstown corporate limit.     | +58                                                                                                                                 |                                                                                                                                |
| Hudson River .....                                                               | At the downstream side of Old Mill Road .....                     | +66                                                                                                                                 |                                                                                                                                |
|                                                                                  | At the Village of Upper Nyack/Village of Nyack corporate limit.   | +7                                                                                                                                  | Village of Upper Nyack.                                                                                                        |
|                                                                                  | At the Village of Upper Nyack/Town of Clarkstown corporate limit. | +7                                                                                                                                  |                                                                                                                                |
| Minisceongo Creek .....                                                          | At the upstream side of the dam (near Gagan Road).                | +11                                                                                                                                 | Town of Haverstraw, Village of Haverstraw, Village of West Haverstraw.                                                         |
|                                                                                  | Approximately 1,000 feet upstream of Thiels Ivy Road.             | +349                                                                                                                                |                                                                                                                                |
|                                                                                  |                                                                   |                                                                                                                                     |                                                                                                                                |
| Nauraushaun Brook .....                                                          | At the Hackensack River confluence .....                          | +57                                                                                                                                 | Town of Clarkstown, Town of Orangetown.                                                                                        |
|                                                                                  | Approximately 200 feet upstream of Smith Road.                    | +297                                                                                                                                |                                                                                                                                |
|                                                                                  |                                                                   |                                                                                                                                     |                                                                                                                                |
| North Branch Pascack Brook.                                                      | At the Pascack Brook confluence .....                             | +351                                                                                                                                | Town of Clarkstown, Town of Ramapo, Village of New Hempstead, Village of New Square, Village of Spring Valley.                 |
|                                                                                  |                                                                   |                                                                                                                                     |                                                                                                                                |
|                                                                                  | Approximately 250 feet upstream of Greenridge Way.                | +513                                                                                                                                |                                                                                                                                |
| Pascack Brook .....                                                              | At the New Jersey state boundary .....                            | +207                                                                                                                                | Town of Clarkstown, Town of Orangetown, Town of Ramapo, Village of Chestnut Ridge, Village of Kaser, Village of Spring Valley. |
| Sparkill Creek .....                                                             | At the downstream side of Grosser Lane .....                      | +578                                                                                                                                | Town of Orangetown, Village of Piermont.                                                                                       |
|                                                                                  | Approximately 350 feet downstream of Rock Road.                   | +14                                                                                                                                 |                                                                                                                                |
|                                                                                  |                                                                   |                                                                                                                                     |                                                                                                                                |
| West Branch Hackensack River.                                                    | At the upstream side of Erie Street .....                         | +124                                                                                                                                | Town of Clarkstown.                                                                                                            |
|                                                                                  | At the upstream side of Ridge Road .....                          | +88                                                                                                                                 |                                                                                                                                |
|                                                                                  |                                                                   |                                                                                                                                     |                                                                                                                                |
| West Branch Saddle River.                                                        | At the Town of Ramapo corporate limit .....                       | +290                                                                                                                                | Town of Ramapo, Village of Airmont.                                                                                            |
|                                                                                  | At the upstream side of the New Jersey state boundary.            | +325                                                                                                                                |                                                                                                                                |
|                                                                                  | Approximately 280 feet upstream of Olympia Lane.                  | +530                                                                                                                                |                                                                                                                                |

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES****Town of Clarkstown**

Maps are available for inspection at the Clarkstown Town Hall, 10 Maple Avenue, New City, NY 10956.

**Town of Haverstraw**

Maps are available for inspection at the Haverstraw Town Hall, 1 Rosman Road, Garnerville, NY 10923.

**Town of Orangetown**

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Modified | Communities affected |
|--------------------|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|----------------------|
|--------------------|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|----------------------|

Maps are available for inspection at the Town of Orangetown Building Department, 20 Greenbush Road, Orangeburg, NY 10962.

**Town of Ramapo**

Maps are available for inspection at the Ramapo Town Hall, 237 State Route 59, Suffern, NY 10901.

**Village of Airmont**

Maps are available for inspection at the Village Hall, 251 Cherry Lane, Airmont, NY 10982.

**Village of Chestnut Ridge**

Maps are available for inspection at the Village Hall, 277 Old Nyack Turnpike, Chestnut Ridge, NY 10977.

**Village of Haverstraw**

Maps are available for inspection at the Village Hall, 40 New Main Street, Haverstraw, NY 10927.

**Village of Kaser**

Maps are available for inspection at the Kaser Village Hall, 15 Elyon Road, Monsey, NY 10952.

**Village of Montebello**

Maps are available for inspection at the Village Hall, 1 Montebello Road, Montebello, NY 10901.

**Village of New Hempstead**

Maps are available for inspection at the New Hempstead Village Hall, 108 Old Schoolhouse Road, New City, NY 10956.

**Village of New Square**

Maps are available for inspection at the Village Hall, 766 North Main Street, New Square, NY 10977.

**Village of Piermont**

Maps are available for inspection at the Village Hall, 478 Piermont Avenue, Piermont, NY 10968.

**Village of Spring Valley**

Maps are available for inspection at the Village Hall, 200 North Main Street, Spring Valley, NY 10977.

**Village of Upper Nyack**

Maps are available for inspection at the Village Hall, 328 North Broadway, Upper Nyack, NY 10960.

**Village of West Haverstraw**

Maps are available for inspection at the Village Hall, 130 Samsondale Avenue, West Haverstraw, NY 10993.

**Sullivan County, Pennsylvania (All Jurisdictions)  
Docket No.: FEMA-B-1233**

|                              |                                                                     |       |                                                                                        |
|------------------------------|---------------------------------------------------------------------|-------|----------------------------------------------------------------------------------------|
| Big Run .....                | At the Muncy Creek confluence .....                                 | +965  | Township of Davidson.                                                                  |
|                              | Approximately 1,660 feet upstream of Fairman Road.                  | +1153 |                                                                                        |
| Little Loyalsock Creek ..... | Approximately 1,150 feet downstream of the Marsh Run confluence.    | +1432 | Borough of Dushore.                                                                    |
|                              | Approximately 540 feet upstream of Main Street.                     | +1458 |                                                                                        |
| Loyalsock Creek .....        | Approximately 2.6 miles downstream of the Ogdonia Creek confluence. | +780  | Borough of Forksville, Township of Elkland, Township of Forks, Township of Hillsgrove. |
|                              | At the Little Loyalsock Creek confluence .....                      | +1004 |                                                                                        |
| Muncy Creek .....            | At the Muncy Creek Tributary 1 confluence ....                      | +783  | Township of Davidson, Township of Shrewsbury.                                          |
|                              | Approximately 0.76 mile upstream of Pecks Road.                     | +988  |                                                                                        |

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**Borough of Dushore**

Maps are available for inspection at the Municipal Building, 216 Julia Street, Dushore, PA 18614.

**Borough of Forksville**

Maps are available for inspection at Sullivan County Planning and Community Development, 245 Muncy Street, Suite 110, Laporte, PA 18626.

**Township of Davidson**

Maps are available for inspection at the Davidson Township Municipal Building, 20 Michelle Road, Muncy Valley, PA 17758.

**Township of Elkland**

Maps are available for inspection at the Elkland Township Municipal Office Building, 909 Kobbe Road, Forksville, PA 18616.

**Township of Forks**

Maps are available for inspection at the Forks Township Hall, 627 Molyneux Hill Road, Dushore, PA 18614.

**Township of Hillsgrove**

Maps are available for inspection at the Township Hall, 2232 Route 87, Hillsgrove, PA 18619.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Modified | Communities affected |
|--------------------|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|----------------------|
|--------------------|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|----------------------|

**Township of Shrewsbury**

Maps are available for inspection at the Shrewsbury Township Building, 1793 Edkin Hill Road, Muncy Valley, PA 17758.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: December 18, 2013.

**Roy E. Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2014-01375 Filed 1-23-14; 8:45 am]

**BILLING CODE 9110-12-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket ID FEMA-2013-0002]

#### Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

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**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (email) [Luis.Rodriguez3@fema.dhs.gov](mailto:Luis.Rodriguez3@fema.dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

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*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR Part

10, Environmental Consideration. An environmental impact assessment has not been prepared.

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*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

#### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

#### PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

#### § 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

| Flooding source(s)                                                                        | Location of referenced elevation                                   | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Modified | Communities affected                                                              |
|-------------------------------------------------------------------------------------------|--------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| <b>Dearborn County, Indiana, and Incorporated Areas</b><br><b>Docket No.: FEMA-B-1176</b> |                                                                    |                                                                                                                                     |                                                                                   |
| Great Miami River .....                                                                   | Approximately 0.23 mile upstream of the Ohio River confluence.     | +490                                                                                                                                | City of Greendale, Unincorporated.                                                |
| Ohio River .....                                                                          | 5.07 miles upstream of the Ohio River confluence .....             | +490                                                                                                                                | Areas of Dearborn County.                                                         |
|                                                                                           | Approximately 0.65 mile upstream of the Laughery Creek confluence. | +486                                                                                                                                | City of Aurora, City of Lawrenceburg, Unincorporated Areas of Dearborn County.    |
|                                                                                           | Approximately 1.25 miles upstream of the Tanners Creek confluence. | +488                                                                                                                                |                                                                                   |
| Tanners Creek .....                                                                       | Approximately 0.46 mile downstream of U.S. Route 50 .....          | +489                                                                                                                                | City of Greendale, City of Lawrenceburg, Unincorporated Areas of Dearborn County. |
| Wilson Creek .....                                                                        | Approximately 2.07 miles upstream of Conrail .....                 | +489                                                                                                                                |                                                                                   |
|                                                                                           | At the Ohio River confluence .....                                 | +487                                                                                                                                | City of Aurora, Unincorporated Areas of Dearborn County.                          |
|                                                                                           | Approximately 0.35 miles upstream of Wilson Creek Road             | +487                                                                                                                                |                                                                                   |

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

#### ADDRESSES

##### City of Aurora

Maps are available for inspection at City Hall, 235 Main Street, Aurora, IN 47001.

##### City of Greendale

Maps are available for inspection at Utilities Office, 510 Ridge Avenue, Greendale, IN 47025.

##### City of Lawrenceburg

Maps are available for inspection at Administration Building, 230 Walnut Street, Lawrenceburg, IN 47025.

##### Unincorporated Areas of Dearborn County

Maps are available for inspection at Dearborn County Administration Building, 215B West High Street, Lawrenceburg, IN 47025.

#### Colfax County, Nebraska, and Incorporated Areas

##### Docket No.: FEMA-B-1178

|                                 |                                                          |       |                                                          |
|---------------------------------|----------------------------------------------------------|-------|----------------------------------------------------------|
| East Fork Maple Creek .....     | Approximately 81 feet downstream of State Highway 91 ... | +1454 | Unincorporated Areas of Colfax County.                   |
| Platte River .....              | Approximately 1,651 feet upstream of County Road 14 .... | +1467 |                                                          |
|                                 | Approximately 0.73 miles upstream of County Road 18 .... | +1310 | Unincorporated Areas of Colfax County.                   |
| Shell Creek .....               | Approximately 2.93 miles upstream of Wolfe Road .....    | +1410 |                                                          |
|                                 | Approximately 834 feet upstream of County Road D .....   | +1332 | Unincorporated Areas of Colfax County.                   |
| Shell Creek (Right Overbank) .. | Approximately 1.9 miles upstream of County Road 2 .....  | +1446 |                                                          |
|                                 | Approximately 0.76 miles downstream of County Road E     | +1348 | City of Schuyler, Unincorporated Areas of Colfax County. |
|                                 | Approximately 1.5 miles upstream of U.S. Route 30 .....  | +1361 |                                                          |

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Lower Low Water.

#### ADDRESSES

##### City of Schuyler

Maps are available for inspection at the City Office, 1103 B Street, Schuyler, NE 68661.

##### Unincorporated Areas of Colfax County

Maps are available for inspection at the County Courthouse, 411 East 11th Street, Schuyler, NE 68661.

| Flooding source(s)                                                             | Location of referenced elevation                                                  | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Modified | Communities affected                                 |
|--------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| <b>Smith County, Texas, and Incorporated Areas<br/>Docket No.: FEMA-B-1213</b> |                                                                                   |                                                                                                                                     |                                                      |
| Black Fork Creek .....                                                         | Approximatey 0.43 mile upstream of the Prairie Creek West confluence.             | +380                                                                                                                                | City of Tyler, Unincorporated Areas of Smith County. |
| Black Fork Creek Tributary BF-1.                                               | Approximately 0.71 mile upstream of East 5th Street .....                         | +531                                                                                                                                | City of Tyler, Unincorporated Areas of Smith County. |
|                                                                                | At the Black Fork Creek confluence .....                                          | +436                                                                                                                                |                                                      |
| Black Fork Creek Tributary BF-M-1.                                             | Approximately 1.2 miles upstream of Loop 323 .....                                | +476                                                                                                                                | City of Tyler.                                       |
|                                                                                | At the Black Fork Creek confluence .....                                          | +496                                                                                                                                |                                                      |
| Black Fork Creek Tributary D ...                                               | Approximately 1,475 feet upstream of Devine Street .....                          | +523                                                                                                                                | City of Tyler.                                       |
|                                                                                | At the Black Fork Creek confluence .....                                          | +469                                                                                                                                |                                                      |
| Black Fork Creek Tributary D-1                                                 | Approximately 1,180 feet upstream of East Front Street ...                        | +508                                                                                                                                | City of Tyler.                                       |
|                                                                                | At the Black Fork Creek Tributary D confluence .....                              | +473                                                                                                                                |                                                      |
| Black Fork Creek Tributary D-2                                                 | Approximately 1,770 feet upstream of the Black Fork Creek Tributary D confluence. | +479                                                                                                                                | City of Tyler.                                       |
|                                                                                | At the Black Fork Creek Tributary D confluence .....                              | +487                                                                                                                                |                                                      |
| Black Fork Creek Tributary D-3                                                 | Approximately 1,053 feet upstream of Townsend Avenue                              | +490                                                                                                                                | City of Tyler.                                       |
|                                                                                | At the Black Fork Creek Tributary D confluence .....                              | +488                                                                                                                                |                                                      |
| Butler Creek .....                                                             | At Elm Street .....                                                               | +491                                                                                                                                | City of Tyler, Unincorporated Areas of Smith County. |
|                                                                                | Approximately 340 feet upstream of Farm to Market 2661                            | +361                                                                                                                                |                                                      |
| Gilley Creek .....                                                             | Approximately 640 feet upstream of State Route 155 .....                          | +457                                                                                                                                | City of Tyler, Unincorporated Areas of Smith County. |
|                                                                                | Approximately 310 feet downstream of Farm to Market 848.                          | +379                                                                                                                                |                                                      |
| Gilley Creek Tributary G-1 .....                                               | Approximately 150 feet upstream of University Boulevard                           | +474                                                                                                                                | City of Tyler, Unincorporated Areas of Smith County. |
|                                                                                | At the Gilley Creek confluence .....                                              | +426                                                                                                                                |                                                      |
| Harris Creek .....                                                             | Approximately 1.14 miles upstream of County Road 2120                             | +478                                                                                                                                | Unincorporated Areas of Smith County.                |
|                                                                                | Approximately 300 feet upstream of the Ray Creek confluence.                      | +329                                                                                                                                |                                                      |
| Henshaw Creek .....                                                            | Approximately 2.16 miles upstream of Farm to Market 850                           | +463                                                                                                                                | Unincorporated Areas of Smith County.                |
|                                                                                | At the West Mud Creek confluence .....                                            | +383                                                                                                                                |                                                      |
| Indian Creek .....                                                             | Approximately 0.71 mile upstream of County Road 165 ....                          | +477                                                                                                                                | City of Tyler, Unincorporated Areas of Smith County. |
|                                                                                | Approximately 490 feet upstream of the Lake Palestine confluence.                 | +349                                                                                                                                |                                                      |
| Ray Creek .....                                                                | Approximately 1,950 feet upstream of Loop 323 .....                               | +473                                                                                                                                | Unincorporated Areas of Smith County.                |
|                                                                                | Approximately 0.37 mile upstream of the Harris Creek confluence.                  | +332                                                                                                                                |                                                      |
| Shackleford Creek .....                                                        | Approximately 525 feet upstream of Old Gladwater Highway.                         | +436                                                                                                                                | City of Tyler, Unincorporated Areas of Smith County. |
|                                                                                | At the West Mud Creek confluence .....                                            | +383                                                                                                                                |                                                      |
| West Mud Creek .....                                                           | Approximately 620 feet upstream of Paluxy Drive (Farm to Market 756).             | +481                                                                                                                                | City of Tyler, Unincorporated Areas of Smith County. |
|                                                                                | Approximately 200 feet upstream of Farm to Market 344 East.                       | +361                                                                                                                                |                                                      |
| West Mud Creek Tributary 11 ..                                                 | Approximately 1,300 feet upstream of Easy Street .....                            | +496                                                                                                                                | City of Tyler.                                       |
|                                                                                | At the West Mud Creek confluence .....                                            | +419                                                                                                                                |                                                      |
| West Mud Creek Tributary B ....                                                | Approximately 400 feet upstream of Holly Creek Drive ....                         | +462                                                                                                                                | City of Tyler.                                       |
|                                                                                | Approximately 125 feet upstream of the West Mud Creek confluence.                 | +467                                                                                                                                |                                                      |
| West Mud Creek Tributary M-1                                                   | Approximately 125 feet upstream of Paluxy Drive .....                             | +504                                                                                                                                | City of Tyler.                                       |
|                                                                                | At the West Mud Creek Tributary M-A confluence .....                              | +444                                                                                                                                |                                                      |
| West Mud Creek Tributary M-2                                                   | Approximately 1,440 feet upstream of Cross Creek Circle                           | +485                                                                                                                                | City of Tyler.                                       |
|                                                                                | Approximately 425 feet upstream of the West Mud Creek confluence.                 | +463                                                                                                                                |                                                      |
| West Mud Creek Tributary M-A                                                   | Approximately 1,510 feet upstream of Barbee Drive .....                           | +469                                                                                                                                | City of Tyler.                                       |
|                                                                                | Approximately 200 feet upstream of the West Mud Creek confluence.                 | +444                                                                                                                                |                                                      |
| West Mud Creek Tributary M-A.1.                                                | Approximately 80 feet upstream of Woodland Hills Drive ..                         | +509                                                                                                                                | City of Tyler.                                       |
|                                                                                | At the West Mud Creek Tributary M-A confluence .....                              | +471                                                                                                                                |                                                      |
|                                                                                | Approximately 680 feet upstream of Rice Road .....                                | +485                                                                                                                                |                                                      |

| Flooding source(s)              | Location of referenced elevation                                                | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Modified | Communities affected                                 |
|---------------------------------|---------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| West Mud Creek Tributary M–A.2. | At the West Mud Creek Tributary M–A confluence .....                            | +487                                                                                                                                | City of Tyler.                                       |
|                                 | Approximately 830 feet upstream of the West Mud Creek Tributary M–A confluence. | +493                                                                                                                                |                                                      |
| West Mud Creek Tributary M–C    | Approximately 450 feet upstream of the West Mud Creek confluence.               | +477                                                                                                                                | City of Tyler.                                       |
|                                 | Approximately 50 feet upstream of Old Jacksonville Highway.                     | +530                                                                                                                                |                                                      |
| West Mud Creek Tributary M–C.1. | Approximately 160 feet upstream of the West Mud Creek Tributary M–C confluence. | +488                                                                                                                                | City of Tyler.                                       |
|                                 | Approximately 1,010 feet upstream of New Copeland Road.                         | +491                                                                                                                                |                                                      |
| West Mud Creek Tributary M–C.2. | At the West Mud Creek Tributary M–C confluence .....                            | +502                                                                                                                                | City of Tyler.                                       |
|                                 | Approximately 1,000 feet upstream of Old Bullard Road ...                       | +511                                                                                                                                |                                                      |
| Wiggins Creek .....             | At the downstream side of the railroad .....                                    | +327                                                                                                                                | Unincorporated Areas of Smith County.                |
|                                 | Approximately 0.83 mile upstream of Harris Creek Church Road.                   | +373                                                                                                                                |                                                      |
| Willow Creek .....              | At the Black Fork Creek confluence .....                                        | +423                                                                                                                                | City of Tyler, Unincorporated Areas of Smith County. |
|                                 | Approximately 1.48 miles upstream of Loop 323 North-Northwest.                  | +480                                                                                                                                |                                                      |

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

#### ADDRESSES

##### City of Tyler

Maps are available for inspection at the Development Services Office, 423 West Ferguson Street, Tyler, TX 75702.

##### Unincorporated Areas of Smith County

Maps are available for inspection at the Smith County Courthouse, 100 North Broadway Avenue, Tyler, TX 75702.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: December 18, 2013.

##### Roy E. Wright,

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2014–01377 Filed 1–23–14; 8:45 am]

BILLING CODE 9110–12–P

#### DEPARTMENT OF HOMELAND SECURITY

##### Federal Emergency Management Agency

##### 44 CFR Part 67

[Docket ID FEMA–2013–0002]

##### Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

**ADDRESSES:** The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) [Luis.Rodriguez3@fema.dhs.gov](mailto:Luis.Rodriguez3@fema.dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

#### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

#### PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

#### § 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

| Flooding Source(s)                                                                       | Location of Referenced Elevation**                     | *Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Effective Modified | Communities affected                                                                |
|------------------------------------------------------------------------------------------|--------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| <b>Volusia County, Florida, and Incorporated Areas</b><br><b>Docket No.: FEMA-B-1221</b> |                                                        |                                                                                                                                              |                                                                                     |
| B-19 Canal .....                                                                         | At the Spruce Creek confluence .....                   | +5                                                                                                                                           | City of Daytona Beach, City of Port Orange, Unincorporated Areas of Volusia County. |
|                                                                                          | Approximately 375 feet upstream of Beville Road.       | +29                                                                                                                                          |                                                                                     |
| B-27 Canal North .....                                                                   | At the LPGA Canal confluence .....                     | +5                                                                                                                                           | City of Holly Hill, Unincorporated Areas of Volusia County.                         |
|                                                                                          | Approximately 75 feet upstream of Calle Grande Street. | +5                                                                                                                                           |                                                                                     |
| B-27 Canal South .....                                                                   | At the LPGA Canal confluence .....                     | +5                                                                                                                                           | City of Daytona Beach, City of Holly Hill.                                          |
|                                                                                          | Approximately 70 feet upstream of Kingston Avenue.     | +6                                                                                                                                           |                                                                                     |
| Halifax Canal .....                                                                      | Approximately 700 feet upstream of Powers Avenue.      | +6                                                                                                                                           | City of Port Orange.                                                                |
|                                                                                          | Approximately 100 feet upstream of Jackson Street.     | +7                                                                                                                                           |                                                                                     |
| LPGA Canal .....                                                                         | At the upstream side of Ridgewood Avenue.              | +4                                                                                                                                           | City of Holly Hill.                                                                 |
|                                                                                          | Approximately 1,940 feet upstream of Center Avenue.    | +7                                                                                                                                           |                                                                                     |
| Laurel Creek .....                                                                       | At the upstream side of the railroad .....             | +6                                                                                                                                           | City of Ormond Beach.                                                               |
|                                                                                          | Approximately 330 feet upstream of Laurel Oaks Circle. | +7                                                                                                                                           |                                                                                     |
| Nova Canal North Reach 1 .....                                                           | Approximately 775 feet downstream of LPGA Boulevard.   | +7                                                                                                                                           | City of Holly Hill, Unincorporated Areas of Volusia County.                         |
|                                                                                          | At the upstream side of Alabama Avenue                 | +7                                                                                                                                           |                                                                                     |
| Nova Canal North Reach 2 .....                                                           | Approximately 1,660 feet downstream of 10th Street.    | +7                                                                                                                                           | City of Daytona Beach, City of Holly Hill.                                          |
|                                                                                          | Approximately 925 feet upstream of Orange Avenue.      | +8                                                                                                                                           |                                                                                     |
| Nova Canal South Reach 1 .....                                                           | Approximately 125 feet downstream of Reed Canal Road.  | +7                                                                                                                                           | City of Daytona Beach, City of South Daytona.                                       |
|                                                                                          | At the Nova Canal North Reach 2 confluence.            | +8                                                                                                                                           |                                                                                     |
| Nova Canal South Reach 2 .....                                                           | Approximately 1,775 feet upstream of Nova Road.        | +7                                                                                                                                           | City of Port Orange, City of South Daytona.                                         |
|                                                                                          | At the Nova Canal South Reach 1 confluence.            | +7                                                                                                                                           |                                                                                     |
| Thompson Creek .....                                                                     | At the upstream side of Industrial Drive ..            | +7                                                                                                                                           | City of Ormond Beach.                                                               |



| Flooding Source(s) | Location of Referenced Elevation**                  | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Effective Modified | Communities affected |
|--------------------|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
|                    | Approximately 575 feet upstream of Division Avenue. | +8                                                                                                                                            |                      |

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

#### ADDRESSES

##### City of Daytona Beach

Maps are available for inspection at 950 Bellevue Avenue, Room 600, Daytona Beach, FL 32115.

##### City of Holly Hill

Maps are available for inspection at 1065 Ridgewood Avenue, Holly Hill, FL 32117.

##### City of Ormond Beach

Maps are available for inspection at 22 South Beach Street, Ormond Beach, FL 32174.

##### City of Port Orange

Maps are available for inspection at 1000 City Center Circle, Port Orange, FL 32129.

##### City of South Daytona

Maps are available for inspection at 1672 South Ridgewood Avenue, South Daytona, FL 32119.

##### Unincorporated Areas of Volusia County

Maps are available for inspection at 123 West Indiana Avenue, DeLand, FL 32720.

#### Erie County, Pennsylvania (All Jurisdictions)

##### Docket No.: FEMA-B-1104

|                      |                                                       |      |                                                                                            |
|----------------------|-------------------------------------------------------|------|--------------------------------------------------------------------------------------------|
| Fourmile Creek ..... | Approximately 735 feet downstream of Access Road.     | +577 | Township of Harborcreek, Township of Lawrence Park.                                        |
|                      | Approximately 745 feet downstream of Buffalo Road.    | +688 |                                                                                            |
|                      | Approximately 485 feet downstream of Buffalo Road.    | +693 |                                                                                            |
|                      | Approximately 400 feet upstream of Mindi Court.       | +770 |                                                                                            |
| Lake Erie .....      | Entire coastline in the Commonwealth of Pennsylvania. | +577 | Borough of Lake City, Township of Girard, Township of Harborcreek, Township of North East. |

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

#### ADDRESSES

##### Borough of Lake City

Maps are available for inspection at the Municipal Building, 2350 Main Street, Lake City, PA 16423.

##### Township of Girard

Maps are available for inspection at the Municipal Building, 10140 West Ridge Road, Girard, PA 16417.

##### Township of Harborcreek

Maps are available for inspection at the Township Building, 5601 Buffalo Road, Harborcreek, PA 16421.

##### Township of Lawrence Park

Maps are available for inspection at the Lawrence Park Township Office, 4230 Iroquois Avenue, Erie, PA 16511.

##### Township of North East

Maps are available for inspection at the Township Main Office, 1300 West Main Road, North East, PA 16428.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: December 18, 2013.

**Roy E. Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2014-01376 Filed 1-23-14; 8:45 am]

**BILLING CODE 9110-12-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket ID FEMA-2013-0002]

#### Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

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**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR part

10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

#### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

#### PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

#### § 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

| Flooding source(s)                                                                     | Location of referenced elevation                                      | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Modified | Communities affected                           |
|----------------------------------------------------------------------------------------|-----------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|
| <b>Isabella County, Michigan (All Jurisdictions)</b><br><b>Docket No.: FEMA-B-1227</b> |                                                                       |                                                                                                                                     |                                                |
| Blanchard Mill Pond .....                                                              | Entire shoreline .....                                                | +912                                                                                                                                | Township of Rolland.                           |
| Camelot Lake .....                                                                     | Entire shoreline .....                                                | +706                                                                                                                                | Township of Chippewa.                          |
| Coldwater Lake .....                                                                   | Entire shoreline within community .....                               | +866                                                                                                                                | Township of Nottawa,<br>Township of Sherman.   |
| Halls Lake .....                                                                       | Entire shoreline .....                                                | +994                                                                                                                                | Township of Broomfield.                        |
| Indian Lake .....                                                                      | Entire shoreline .....                                                | +886                                                                                                                                | Township of Vernon.                            |
| Lake Manitonka .....                                                                   | Entire shoreline within community (downstream of North Brinton Road). | +936                                                                                                                                | Township of Sherman.                           |
| Lake Manitonka .....                                                                   | Entire shoreline within community (upstream of North Brinton Road).   | +941                                                                                                                                | Township of Coldwater,<br>Township of Sherman. |
| Lake of the Hills .....                                                                | Entire shoreline within community .....                               | +894                                                                                                                                | Township of Nottawa,<br>Township of Sherman.   |

| Flooding source(s)      | Location of referenced elevation        | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Modified | Communities affected                                                    |
|-------------------------|-----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| Lake Windaga .....      | Entire shoreline within community ..... | +924                                                                                                                                | Township of Coldwater,<br>Township of Sherman.                          |
| Littlefield Lake .....  | Entire shoreline .....                  | +911                                                                                                                                | Township of Gilmore.                                                    |
| Scott Lake Drain .....  | Entire shoreline within community ..... | +892                                                                                                                                | Saginaw Chippewa Tribe,<br>Township of Nottawa.                         |
| Stevenson Lake .....    | Entire shoreline .....                  | +850                                                                                                                                | Township of Vernon.                                                     |
| Weidman Mill Pond ..... | Entire shoreline within community ..... | +887                                                                                                                                | Saginaw Chippewa Tribe,<br>Township of Nottawa,<br>Township of Sherman. |
| Woodruff Lake .....     | Entire shoreline within community ..... | +913                                                                                                                                | Township of Broomfield,<br>Township of Deerfield.                       |

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

#### ADDRESSES

##### **Saginaw Chippewa Tribe**

Maps are available for inspection at Office of the Tribal Clerk, Saginaw Chippewa Indian Tribe, 7070 East Broadway Street, Mount Pleasant, MI 48858.

##### **Township of Broomfield**

Maps are available for inspection at Broomfield Township Hall, 2889 South Rolland Road, Remus, MI 49340.

##### **Township of Chippewa**

Maps are available for inspection at Chippewa Township Hall, 11084 East Pickard Road, Mount Pleasant, MI 48858.

##### **Township of Coldwater**

Maps are available for inspection at Coldwater Township Hall, 8328 West Beck Road, Lake, MI 48632.

##### **Township of Deerfield**

Maps are available for inspection at Deerfield Township Hall, 3032 South Winn Road, Mount Pleasant, MI 48858.

##### **Township of Gilmore**

Maps are available for inspection at Gilmore Township Hall, 1998 West Stevenson Lake Road, Farwell, MI 48622.

##### **Township of Nottawa**

Maps are available for inspection at Nottawa Township Hall, 3024 West Weidman Road, Weidman, MI 48893.

##### **Township of Rolland**

Maps are available for inspection at Rolland Township Hall, 524 Cedar Street, Blanchard, MI 49310.

##### **Township of Sherman**

Maps are available for inspection at Sherman Township Hall, 3550 North Rolland Road, Weidman, MI 48893.

##### **Township of Vernon**

Maps are available for inspection at Vernon Township Hall, 10877 North Lincoln Road, Clare, MI 48617.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: December 18, 2013.

**Roy E. Wright,**

*Deputy Associate Administrator for  
Mitigation, Department of Homeland  
Security, Federal Emergency Management  
Agency.*

[FR Doc. 2014-01373 Filed 1-23-14; 8:45 am]

**BILLING CODE 9110-12-P**

# Proposed Rules

Federal Register

Vol. 79, No. 16

Friday, January 24, 2014

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 61

[NRC-2011-0012]

RIN 3150-A192

### Low-Level Radioactive Waste Disposal Rulemaking and Strategic Assessment of Low-Level Radioactive Waste Regulatory Program

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Public workshop.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) plans to conduct a public workshop to discuss proposed revisions to its Low-Level Radioactive Waste (LLRW) disposal regulations and gather information on an update to the NRC's 2007 Strategic Assessment of the LLRW regulatory program from stakeholders and other interested members of the public. The staff is also seeking comments on developments that would affect the LLRW regulatory program in the next 5–7 years, including changes to the national landscape in the LLRW area that would affect licensees and sited States in the context of safety, security, and the protection of the environment. The NRC will accept written comments at the public workshop and welcomes active participation from those attending.

**DATES:** The public workshop will be held on March 7, 2014, from 8:00 a.m. to 1:00 p.m. (registration begins at 7:30 a.m.) in Phoenix, Arizona.

**ADDRESSES:** Please refer to Docket ID NRC-2011-0012 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0012. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; 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 access publicly-available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this notice (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.

The public workshop will be held at the Renaissance Phoenix Downtown Hotel, 50 East Adams Street, Phoenix, Arizona 85004. The phone number for the hotel is 1-602-333-0000. The public workshop will be held immediately following the 2014 Waste Management Conference.

#### FOR FURTHER INFORMATION CONTACT:

Melanie C. Wong, telephone: 301-415-2432, email: [Melanie.Wong@nrc.gov](mailto:Melanie.Wong@nrc.gov), or Tarsha Moon, telephone: 301-415-6745; email: [Tarsha.Moon@nrc.gov](mailto:Tarsha.Moon@nrc.gov). Both of the Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### I. Background

##### Revisions to LLRW Disposal Regulations

The Commission's licensing requirements for the disposal of LLRW in near-surface [the uppermost 30 meters (100 feet)] facilities reside in part 61 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Licensing Requirements for Land Disposal of Radioactive Waste." These regulations were published in the **Federal Register** on December 27, 1982 (47 FR 57446). The regulations emphasize an integrated systems approach to the disposal of commercial LLRW, including site selection, disposal facility design and

operation, minimum waste form requirements, and disposal facility closure. To lessen reliance on institutional controls, 10 CFR Part 61 emphasizes passive rather than active systems to limit and retard releases to the environment.

Development of the 10 CFR Part 61 regulations in the early 1980s was based on several assumptions as to the types of wastes likely to go into a commercial LLRW disposal facility. To better understand what the likely inventory of wastes available for disposal might be, the NRC conducted a survey of existing LLRW generators. The survey, documented in Chapter 3 of NUREG-0782, "Draft Environmental Impact Statement [DEIS] on 10 CFR Part 61 Licensing Requirements for Land Disposal of Radioactive Waste" (ADAMS Accession No. ML052590347), revealed that there were 37 distinct commercial waste streams consisting of 25 radionuclides of potential regulatory interest. The specific waste streams in question were representative of the types of commercial LLRW being generated at the time. Waste streams associated with the U.S. Department of Energy's (DOE's) nuclear defense complex were not considered as part of the survey, since disposal of those wastes, at that time, was to be conducted at the DOE-operated sites. Over the last several years, there have been a number of developments that have called into question some of the key assumptions made in connection with the earlier 10 CFR Part 61 survey, including:

- The emergence of potential LLRW streams that were not considered in the original 10 CFR Part 61 rulemaking, including large quantities of Depleted Uranium (DU), and possibly incidental wastes associated with the commercial reprocessing of spent nuclear fuel;
- The DOE's increasing use of commercial facilities for the disposal of defense-related LLRW streams; and
- Extensive international operational experience in the management of LLRW and intermediate-level radioactive wastes that did not exist at the time 10 CFR Part 61 was promulgated.

In its March 18, 2009, Staff Requirements Memorandum (SRM) SRM-SECY-08-0147,<sup>1</sup> "Response to

<sup>1</sup> See <http://www.nrc.gov/reading-rm/doc-collections/commission/srm/2008/2008-0147srm.pdf>.

Commission Order CLI-05-20 Regarding Depleted Uranium” (ADAMS Accession No. ML090770988), the Commission directed the NRC staff to proceed with a rulemaking to amend 10 CFR Part 61 to specify a requirement for a site-specific analysis for the disposal of large quantities of DU including the technical requirements for such an analysis, and to develop a guidance document that outlines the parameters and assumptions to be used in conducting such site-specific analyses. In a second SRM, SRM-SECY-10-0043,<sup>2</sup> “Blending of Low-Level Radioactive Waste” (ADAMS Accession No. ML102861764), the Commission directed the staff to include blended LLRW streams as part of this rulemaking initiative. Following the solicitation of early public input on June 24, 2009 (74 FR 30175), the NRC staff developed a regulatory basis document to support a proposed rule (ADAMS Accession No. ML111040419), shared it with the NRC Agreement States, and developed a proposed rulemaking package. In an SRM, dated January 19, 2012,<sup>3</sup> SRM-COMWDM-11-0002/COMGEA-11-002, “Revision to 10 CFR Part 61” (ADAMS Accession No. ML120190360), the Commission provided additional direction to the NRC staff concerning this particular rulemaking. Specifically, the Commission directed the NRC staff to amend the existing draft proposed rulemaking package to include the following:

- Allowing licensees the flexibility to use International Commission on Radiological Protection (ICRP) dose methodologies in a site-specific performance assessment for the disposal of all radioactive waste.
- Developing a two-tiered approach that establishes a compliance period that covers the reasonably foreseeable future and a longer period of performance that is not *a priori* and is established to evaluate the performance of the site over longer timeframes. The period of performance is developed based on the candidate site characteristics (waste package, waste form, disposal technology, cover technology, and geo-hydrology) and the peak dose to a designated receptor.
- Adding flexibility for disposal facilities to establish site-specific waste acceptance criteria based on the results of the site’s performance assessment and intruder assessment.

- Establishing a compatibility category for the elements of the revised rule that establish the requirements for site-specific performance assessments and the development of the site-specific waste acceptance criteria that ensures alignment between the States and Federal Government on safety fundamentals, while providing the States with the flexibility to determine how to implement these safety requirements.

On July 18, 2013, the NRC staff submitted a revised draft proposed rule and guidance for Commission review and approval, SECY-13-0075, “Proposed Rule: Low-Level Radioactive Waste Disposal (10 CFR Part 61) (RIN 3150-A192)” (ADAMS Accession No. ML13129A268). The draft proposed rule would update the existing technical analysis requirements for protection of the general population (i.e., performance assessment); add a new site-specific technical analysis for the protection of inadvertent intruders (i.e., intruder assessment); add a new analysis for certain long-lived LLRW; and revise the technical analyses required at closure.

The draft proposed rule would also add a new requirement to develop criteria for the acceptance of LLRW for disposal based on either the results of these technical analyses or on the existing LLRW classification requirements. This would facilitate consideration of whether a particular disposal site is suitable for future disposal of DU, blended LLRW, or any other previously unanalyzed LLRW stream. Additionally, the draft proposed rule would facilitate implementation and better align the requirements with current health and safety standards.

#### *Update to the 2007 Strategic Assessment of the LLRW Regulatory Program*

In 2007, due to developments in the national program for LLRW disposal, as well as changes in the regulatory environment, the NRC’s LLRW program faced new challenges and issues. New technical issues related to protection of public health and the environment and security emerged. These challenges and issues included (1) need for greater flexibility and reliability in LLRW disposal options; (2) increased storage of Class B and Class C LLRW because of the potential closing of the Barnwell, South Carolina disposal facility to out-of-compact waste generators; (3) the potential need to dispose of large quantities of power plant decommissioning waste, as well as DU from enrichment facilities; (4) increased safety concerns; (5) need for greater

LLRW program resources than were available; (6) increased security concerns related to storing LLRW in general and sealed radioactive sources in particular; and (7) potential for generation of new waste streams (for example, by the next generation of nuclear reactors and the potential reemergence of nuclear fuel reprocessing in the United States).

Based on these challenges and issues, the NRC staff conducted a Strategic Assessment of the NRC’s LLRW regulatory program. Based on extensive stakeholder input during meetings, the NRC staff received a variety of activities to be included in the Strategic Assessment and evaluated them based on the overall strategic objectives for ensuring safety, and security, and other factors. From these solicited activities, the NRC staff developed a list of 20 activities responsive to identified programmatic needs. These activities were assigned priorities of high, medium, or low and ranged from narrowly focused activities such as updating LLRW storage guidance to broader activities such as suggesting legislative changes to Congress to improve the national LLRW program.

The NRC staff published the Strategic Assessment in late 2007<sup>4</sup> in SECY-07-0180, “Strategic Assessment of Low-Level Radioactive Waste Regulatory Program” (ADAMS Accession No. ML071350299). The Strategic Assessment identified and prioritized the NRC staff’s activities to ensure that the LLW program continued to: (1) Ensure safe and secure LLRW disposal; (2) improve the effectiveness, efficiency, and adaptability of the NRC’s LLRW regulatory program; and (3) ensure regulatory stability and predictability, while allowing flexibility in disposal options.

Since 2007, the NRC staff has completed several high priority activities identified in the 2007 Strategic Assessment, including updating guidance for LLRW storage, evaluating the disposal of DU and the measures needed to ensure its safe disposal, and developing a procedure for the review of low-activity waste disposal in Resource Conservation and Recovery Act (RCRA) facilities not licensed by the NRC. In addition, the NRC staff continues to work on the revisions to 10 CFR part 61 and the 1995 Concentration Averaging and Encapsulation Branch Technical Position.

After 6 years, much progress has been made in completing several activities

<sup>2</sup> See <http://www.nrc.gov/reading-rm/doc-collections/commission/srm/2010/2010-0043srm.pdf>.

<sup>3</sup> See <http://www.nrc.gov/reading-rm/doc-collections/commission/comm-secy/2011/2011-0002comgeawdm-srm.pdf>.

<sup>4</sup> See <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2007/secy2007-0180/2007-0180sc.pdf>.

identified in the 2007 Strategic Assessment as described above. In addition, the national LLRW program continues to evolve. To set the direction for the NRC's LLRW regulatory program in the next several years, the NRC staff will begin developing a new Strategic Assessment of the NRC's LLRW program. The new assessment will provide opportunities for stakeholder engagement.

## II. NRC Public Workshop

The purpose of this public workshop is to discuss the status of an on-going rulemaking effort to revise 10 CFR part 61 and gather information on the update to the 2007 Strategic Assessment of the NRC's LLRW regulatory program from interested members of the public. This overall approach is consistent with the NRC's openness policy. The March 7, 2014, public workshop will be organized into two parts. In the first part, the NRC staff will discuss the status of the proposed revisions to 10 CFR part 61. In the second part, a panel of invited experts will discuss developments that would affect the LLRW regulatory program in the next 5–7 years, including changes to the national landscape in the LLRW area that would affect licensees and sited States in the context of safety, security, and the protection of the environment.

Following each of the two parts of the workshop, interested members of the public will have an opportunity to pose questions and comment.

Pre-registration for this workshop is not necessary. Members of the public choosing to participate in this workshop remotely can do so in one of two ways—online by webinar or via a telephone (audio) connection. This audio is the bridge line ID: 1–800–779–7381, passcode: 8375324.

For those interested members of the public that wish to attend the workshop remotely by Webinar, the Webinar workshop registration link can be found at: <https://www1.gotomeeting.com/register/482915697>. The Webinar ID is 482–915–697. After registering, instructions for joining the Webinar (including a teleconference number and pass code) will be provided via email. All participants will be in “listen-only” mode during the presentation. Participants will have a chance to pose questions either orally after the presentation or in writing during the Webinar.

To receive a call back, provide your phone number when you join the workshop, or call the following number and enter the access code:

Call-in toll-free number (US/Canada): 1–800–779–7381. The access code is 8375324.

The agenda for the public workshop will be noticed no fewer than 10 days prior to the workshop on the NRC's Public Meeting Schedule Web site at <http://www.nrc.gov/public-involve/public-meetings/index.cfm>.

Questions about participation in the public workshop should be directed to the point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated at Rockville, Maryland this 14th day of January 2014. For the Nuclear Regulatory Commission.

**Aby Mohseni,**

*Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.*

[FR Doc. 2014–01291 Filed 1–23–14; 8:45 am]

**BILLING CODE 7590–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Chapter I

**RIN 3038–AD52**

### Concept Release on Risk Controls and System Safeguards for Automated Trading Environments

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Reopening of comment period.

**SUMMARY:** On September 12, 2013, the Commodity Futures Trading Commission (“Commission”) published in the **Federal Register** a Concept Release on Risk Controls and System Safeguards for Automated Trading Environments (“Concept Release”). The Concept Release addresses the evolution from human-centered to automated trading environments and seeks comment on a series of pre-trade risk controls, post-trade measures, system safeguards and other protections applicable to trading platforms and other categories of market participants. Its original comment period closed on December 11, 2013. For the reasons set forth below, the Commission is reopening the comment period for the Concept Release beginning on January 21, 2014. Interested parties may submit comments on or before February 14, 2014.

**DATES:** The comment period for the Concept Release published September 12, 2013 (78 FR 56542) is reopened as

of January 21, 2014, and extended until February 14, 2014.

**ADDRESSES:** You may submit comments, identified by RIN 3038–AD52, by any of the following methods:

- **CFTC Web site, via Comments Online:** <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.
- **Mail:** Melissa D. Jurgens, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

- **Hand Delivery/Courier:** Same as “mail,” above.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments. Please submit comments by only one method. All comments should be submitted in English or accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act (“FOIA”), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in 17 CFR 145.9. The Commission reserves the right, but shall have no obligation, to review, prescreen, filter, redact, refuse, or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

#### **FOR FURTHER INFORMATION CONTACT:**

Sebastian Pujol Schott, Associate Director, Division of Market Oversight, [sps@cftc.gov](mailto:sps@cftc.gov) or 202–418–5641; Marilee Dahlman, Special Counsel, Division of Market Oversight, [mdahlman@cftc.gov](mailto:mdahlman@cftc.gov) or 202–418–5264.

**SUPPLEMENTARY INFORMATION:** On September 12, 2013, the Commission published in the **Federal Register** (78 FR 56542) the Concept Release on Risk Controls and System Safeguards for Automated Trading Environments. The Concept Release provides an overview of the transition from human-centered to automated trading environments, reviews the Commission's regulatory response to date and existing industry practices, and describes a series of pre-

trade risk controls, post-trade measures, system safeguards and other protections applicable to trading platforms and other categories of market participants. The Commission requests comment on a broad range of topics including, among other things, the extent to which certain risk controls have been adopted by industry, whether there is a need for regulatory action on such risk controls in order to provide more uniform risk mitigation across Commission-regulated derivatives markets, and the appropriate stage in the lifecycle of an order at which risk controls should be placed.

The Commission is reopening the comment period for the Concept Release beginning on January 21, 2014, and ending on February 14, 2014. Parties who previously submitted comments on the Concept Release, but did so after the original December 11, 2013, comment deadline, are invited to resubmit their comments so that they may be properly considered. Parties presenting relevant materials during the January 21, 2014, meeting of the Commission's Technology Advisory Committee are invited to submit such materials for inclusion in the comment file. Parties may also submit new comments regarding any matter raised in the Concept Release. All comments must be received on or before February 14, 2014.

Issued in Washington, DC, on January 17, 2014, by the Commission.

**Christopher J. Kirkpatrick,**  
*Deputy Secretary of the Commission.*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

#### **Appendix to Concept Release on Risk Controls and System Safeguards for Automated Trading Environments—Commission Voting Summary**

On this matter, Acting Chairman Wetjen and Commissioners Chilton and O'Malia voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2014–01372 Filed 1–23–14; 8:45 am]

**BILLING CODE 6351–01–P**

## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Part 1**

[REG–148812–11]

**RIN 1545–BK80**

#### **Arbitrage Rebate Overpayments on Tax-Exempt Bonds; Hearing Cancellation**

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

**ACTION:** Cancellation of a notice of public hearing on proposed rulemaking.

**SUMMARY:** This document cancels a public hearing on proposed regulations that provide guidance on the recovery of overpayments of arbitrage rebate on tax-exempt bonds and other tax-advantaged bonds.

**DATES:** The public hearing originally scheduled for February 5, 2014 at 2 p.m. is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Oluwafunmilayo Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and a notice of public hearing that appeared in the **Federal Register** on Monday, September 16, 2013 (78 FR 56841) announced that a public hearing was scheduled for February 5, 2014, at 2 p.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is under section 148 of the Internal Revenue Code.

The public comment period for these regulations expired on December 16, 2013. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of January 17, 2014, no one has requested to speak. Therefore, the public hearing scheduled for February 5, 2014 at 2 p.m. is cancelled.

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2014–01388 Filed 1–23–14; 8:45 am]

**BILLING CODE 4830–01–P**

## **DEPARTMENT OF COMMERCE**

### **United States Patent and Trademark Office**

#### **37 CFR Part 1**

[Docket No.: PTO–P–2013–0040]

**RIN 0651–AC90**

#### **Changes To Require Identification of Attributable Owner**

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Patent and Trademark Office (Office) is proposing

changes to the rules of practice to facilitate the examination of patent applications and to provide greater transparency concerning the ownership of patent applications and patents. This initiative is one of a number of executive actions issued by the Administration that are designed to ensure the highest-quality patents, enhance competition by providing the public with more complete information about the competitive environment in which innovators operate, enhance technology transfer and reduce the costs of transactions for patent rights by making patent ownership information more readily and easily available, reduce abusive patent litigation by helping the public defend itself against frivolous litigation, and level the playing field for innovators. The Office is proposing in this document to require that the attributable owner, including the ultimate parent entity, be identified during the pendency of a patent application and at specified times during the life of a patent. The Office is specifically proposing that the attributable owner be identified on filing of an application (or shortly thereafter), when there is a change in the attributable owner during the pendency of an application, at the time of issue fee and maintenance fee payments, and when a patent is involved in supplemental examination, *ex parte* reexamination, or a trial proceeding before the Patent Trial and Appeal Board (PTAB). The Office is also seeking comments on whether the Office should enable patent applicants and owners to voluntarily report licensing offers and related information to the Office, which the Office will then make available to the public in an accessible online format.

**DATES:** *Comment deadline date:* Written comments must be received on or before March 25, 2014.

**ADDRESSES:** Comments should be sent by electronic mail message over the Internet addressed to: [AC90.comments@uspto.gov](mailto:AC90.comments@uspto.gov). Comments may also be submitted by postal mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of James Engel, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (<http://www.regulations.gov>) for additional

instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments submitted in plain text are preferred, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Office of the Commissioner for Patents, currently located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (<http://www.uspto.gov>). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

**FOR FURTHER INFORMATION CONTACT:**

James Engel, Senior Legal Advisor ((571) 272-7725), or Erin M. Harriman, Legal Advisor ((571) 272-7747), Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

**SUPPLEMENTARY INFORMATION:**

Executive Summary: *Purpose:* On June 4, 2013, the White House issued five executive actions designed to increase transparency of the patent system, ensure the highest-quality patents, reduce abusive patent litigation and level the playing field for innovators. The first of these executive actions is titled "Making 'Real Party in Interest' the New Default," and calls for the Office to begin a rulemaking process to require patent applicants and patent owners to regularly update ownership information when the applicant or patent owner is involved in a proceeding before the Office, including designation of the "ultimate parent entity(ies)" of those owners. To help achieve the above goals as well as to improve the incentives for future innovation, to enhance competition by providing the public with more complete information about the competitive landscape and technology marketplace by making patent ownership information more readily available, and to help the Office carry out its task of patent examination, the

Office is proposing changes to the rules of practice concerning the attributable owner of pending patent applications and patents. This document and the proposed rules have adopted the term "attributable owner" rather than "real party in interest" to avoid confusion given that the term "real party in interest" is used elsewhere in title 35, United States Code (e.g., 35 U.S.C. 118, 315, 317, 325, 327).

The proposed changes will facilitate patent examination and other parts of the Office's internal processes by helping to: (1) Ensure that a "power of attorney" is current in each application or proceeding before the Office; (2) avoid potential conflicts of interest for Office personnel; (3) determine the scope of prior art under the common ownership exception under 35 U.S.C. 102(b)(2)(C) and uncover instances of double patenting; (4) verify that the party making a request for a post-issuance proceeding is a proper party for the proceeding; and (5) ensure that the information the Office provides to the public concerning published applications and issued patents is accurate and not misleading. Beyond providing these benefits to the Office, collecting attributable owner information and making it publicly available is expected to: (1) Enhance competition and increase incentives to innovate by providing innovators with information that will allow them to better understand the competitive environment in which they operate; (2) enhance technology transfer and reduce the costs of transactions for patent rights since patent ownership information will be more readily and easily accessible; (3) reduce risk of abusive patent litigation by helping the public defend itself against such abusive assertions by providing more information about all the parties that have an interest in patents or patent applications; and (4) level the playing field for innovators.

The Office is also seeking comments on whether the Office should enable patent applicants and owners to voluntarily report licensing offers and related information to the Office, which the Office will then make available to the public in an accessible online format. Such licensing information could include willingness to license, as well as licensing contacts, license offer terms, or commitments to license the patent, e.g., on royalty-free or reasonable and non-discriminatory terms. Further background and details about this request for comments are below.

In order to engage the public and provide as much opportunity for feedback and input as possible, the Office intends to hold two stakeholder

input meetings at which members of the public can provide comment to the Office on this proposal. These meetings will be held during the public comment period for this proposal, at times and locations to be determined. The Office will publicize the times and locations of these meetings through the Office's Internet Web site (<http://www.uspto.gov>).

*Summary of Major Provisions:* The Office proposes collecting two basic types of attributable owner information: (1) Titleholders and (2) enforcement entities. If applicable, the attributable owner would also include the ultimate parent entity as defined in 16 CFR 801.1(a)(3) of either of these two reporting categories. The Office proposes adopting this "ultimate parent entity" definition rather than creating a new one to minimize the need for additional investigation and analysis of ownership structures. The Office also proposes that "attributable owner" include any entity that creates or uses any type of arrangement or device with the purpose or effect of temporarily divesting such entity of attributable ownership or preventing the vesting of such attributable ownership.

The Office proposes that patent applicants identify the attributable owner or owners when an application is filed (or shortly thereafter), when attributable owner changes during the pendency of an application (within three months of such change), when the issue fee is due for an application that has been allowed, when a maintenance fee is due, and when a patent becomes involved in certain post-issuance proceedings at the Office, including in supplemental examination, *ex parte* reexamination, or a trial proceeding before the PTAB.

The Office plans to work with its user community to implement this reporting system in a user-friendly manner and welcomes input on how this can best be accomplished. Subject to financial and resource constraints, the Office anticipates, in particular, developing a system for the electronic uploading and updating of attributable owner information, including bulk uploading and updating of attributable owner information when any ownership transfers occur. This type of reporting system will also allow applicants and patentees to indicate that the information the Office has on file is accurate at future checkpoints, such as at the time of maintenance fee payments.

As with other procedural requirements of the Office, this proposal provides an applicant or patent owner with a means to correct omissions and



errors in the attributable owner information that has been reported. The notice also proposes to excuse good faith failures to notify the Office of the attributable owner or to provide correct or complete attributable owner information.

The Office proposes to make the proposed rules applicable to all applications filed on or after the effective date of the final rule. For already-filed, pending applications, the Office proposes to require the reporting of attributable owner or owners when the issue fee is due (if and when such application has been allowed) provided that the notice of allowance is mailed on or after the effective date of the final rule. For already-issued patents, the Office proposes to require the reporting of attributable owner or owners when the next maintenance fee is paid, if the payment occurs on or after the effective date of the final rule. For any trial proceeding in which the petition was filed on or after the effective date of the final rule and any supplemental examination or *ex parte* reexamination in which the request was filed on or after the effective date of the final rule, the Office proposes to require the reporting of attributable owner or owners. The effective date of the final rule would be at least thirty days after publication of the final rule.

While the Office would use attributable owner information for examination purposes in both published and unpublished applications, attributable owner information would be made available to the public for an application that has been published or issued as a patent.

**Costs and Benefits:** This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

**Background:** On June 4, 2013, the White House Task Force on High-Tech Patent Issues published a paper detailing five executive actions and seven legislative recommendations “to protect innovators from frivolous litigation and ensure the highest-quality patents in our system.” *Fact Sheet: White House Task Force on High-Tech Patent Issues, Legislative Priorities & Executive Actions*. The first of the five executive actions calls for the Office to “begin a rulemaking process to require patent applicants and owners to regularly update ownership information when they are involved in proceedings before the [Office], specifically designating the ‘ultimate parent entity’ in control of the patent or application.” *Id.*

With this notice of proposed rulemaking, the Office is proposing changes designed to increase

transparency by collecting ownership information of not just the titleholder (e.g., assignee), but also entities that are real-parties-in-interest because of their right to enforce an issued patent, as well as information about the entities who ultimately control these entities (*i.e.*, the “ultimate parent entities”). The proposed rule is designed to collect information both during the application process and at certain times after a patent issues, and thus will affect both patent applicants and holders of issued patents.

Before the White House initiatives were announced on June 4, 2013, the Office had begun the process of considering whether and how to collect assignment or real-party-in-interest information (referred to herein as the “attributable owner”) with a request for comments in 2011 and a roundtable held at the Office in January 2013. *Request for Comments on Eliciting More Complete Patent Assignment Information*, 76 FR 72372 (Nov. 23, 2011) (2011 Request for Comments); *Notice of Roundtable on Proposed Requirements for Recordation of Real Party-in-Interest Information Throughout Application Pendency and Patent Term*, 77 FR 70385 (Nov. 26, 2012) (2012 Roundtable Notice). The 2012 Roundtable Notice reiterated that the Office was considering promulgating regulations that would require reporting of real-party-in-interest information during the application process and at certain times post-issuance and invited further public input. The Roundtable, which was open to any member of the public, was held on Friday, January 11, 2013. Details on the comments received from organizations and individuals can be found at [http://www.uspto.gov/ip/officechiefecon/roundtable\\_01-11-2013.jsp](http://www.uspto.gov/ip/officechiefecon/roundtable_01-11-2013.jsp).

As set forth in the Roundtable Notice, having accurate and up-to-date attributable owner information will facilitate patent examination and other parts of the Office’s internal processes. As courts have previously recognized, the Office has the authority to promulgate regulations that “shall govern the conduct of proceedings in the Office.” *Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1282 (Fed. Cir. 2005) (quoting 35 U.S.C. 2(b)(2)); *see also Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1335 (Fed. Cir. 2008) (“To comply with section 2(b)(2)(A), a Patent Office rule must be ‘procedural’—*i.e.*, it must ‘govern the conduct of proceedings in the Office.’”). Pursuant to this authority, the Office may require the submission of information that is reasonably necessary to proper examination or treatment of the matter

at hand, provided that such requests are not arbitrary or capricious. *See Star Fruits*, 393 F.3d at 1283–84.

To this end, the Office seeks attributable owner information to ensure that a “power of attorney” is current in each application or each patent involved in a proceeding before the Office. The Office has a clear interest in ensuring that current representatives in any proceeding before the Office are authorized by the current owner of the application or patent. *See Lacavera v. Dudas*, 441 F.3d 1380, 1383 (Fed. Cir. 2006) (“[T]he PTO has broad authority to govern the conduct of proceedings before it and to govern the recognition and conduct of attorneys.” Moreover, the Leahy-Smith America Invents Act, Public Law 112–29 (2011) (“AIA”) amended 35 U.S.C. 118 to provide that an application for patent may be filed by the assignee or person to whom the inventor is under an obligation to assign the invention. *See* Public Law 112–29, 125 Stat. 283, 296 (2011).

In addition, it is important for the Office to know the attributable owner of each application or each patent involved in a proceeding before the Office in order to avoid potential conflicts of interest for Office personnel. This problem has been identified during the adoption of regulations for the PTAB. For example, “in the case of the Board, a conflict would typically arise when an official has an investment in a company with a direct interest in a Board proceeding. Such conflicts can only be avoided if the parties promptly provide information necessary to identify potential conflicts.” *Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions*, 77 FR 48612, 48617 (Aug. 14, 2012). Like administrative patent judges at the PTAB, “[p]atent examiners are quasi-judicial officials.” *Western Elec. Co., Inc. v. Piezo Tech., Inc.*, 860 F.2d 428, 431 (Fed. Cir. 1988) (citing *Butterworth v. United States ex rel. Hoe*, 112 U.S. 50, 67 (1884)). Office employees are also subject to executive branch regulations that govern conflicts of interest in certain cases where employees have threshold financial interests in matters before them. *See* 5 CFR 2640.202(a); *see also* 18 U.S.C. 208. Accordingly, a clear identification of the attributable owner is important to ensure that officials are able to recuse themselves.

There are recent trends towards greater liquidity in the markets for patent-related intellectual property. *See, e.g., U.S. Dept. of Justice & Fed. Trade Comm’n, The Evolving IP Marketplace: Aligning Patent Notice and Remedies*

with *Competition*, at 37–39 (2011) (“*FTC Report*”) (discussing the increasing importance of technology transfer from small, specialized firms to manufacturing firms and from large companies to spin-offs). Thus, the Office has a corresponding need for more regular ownership reporting and updating requirements for the Office’s internal function. In particular, having such accurate and up-to-date attributable owner information will help the Office determine whether current representatives in any proceeding before the Office are authorized by the current applicant or owner. Likewise, having such attributable owner information will facilitate the Office’s efforts to ensure that applicable conflict-of-interest provisions for Office personnel are followed.

Facilitating greater transparency of patent application and patent ownership is also an important part of the Office’s ongoing efforts to modernize patent examination and to improve patent quality. Recent changes in title 35 under the AIA have expanded the role of ownership as part of determining what constitutes prior art. *See* 35 U.S.C. 102(b). In particular, 35 U.S.C. 102(b)(2)(C) (2011) exempts as prior art those patent applications or issued patents that name different inventors where “the subject matter disclosed and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person.” Because ownership of an earlier-filed patent application or issued patent may prevent its use as prior art against a later-filed patent application, patentability may depend not just on the content of the prior art patent application or issued patent, but also on who owns it.

35 U.S.C. 102(b)(2)(C) (2011) differs from the previous statutory provision on which it was based (pre-AIA 35 U.S.C. 103(c)(1)). While pre-AIA 35 U.S.C. 103(c)(1) concerned an exception to obviousness rather than an exception to what constitutes prior art, it otherwise recited virtually identical language to that of the 35 U.S.C. 102(b)(2)(C) (2011), except that pre-AIA 35 U.S.C. 103(c)(1) stated that patentability was not precluded where “the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.” Under pre-AIA 35 U.S.C. 103(c)(1), whether earlier subject matter was prior art was established at the time when the claimed invention in the later-filed application was “made,” by

considering whether the earlier subject matter was owned by the same entity that owned (or had a right to own) the claimed invention that was just made. In contrast, under 35 U.S.C. 102(b)(2)(C) (2011), there may be an opportunity—in the period before the filing of the second application—for ownership to change in a way that affects whether the earlier patent or patent application is prior art for purposes of 35 U.S.C. 102(a)(2) (2011).

In the prosecution context, 35 U.S.C. 102(b)(2)(C) (2011) presents the possibility that a greater amount of prior art might be subject to this exemption than under pre-AIA 35 U.S.C. 103(c)(1), which, in turn, could render the current method of handling the possibility of common ownership under MPEP 706.02(l)(2) (the examiner presenting an initial rejection, and the applicant rebutting the rejection with proof of ownership) inefficient in a manner contrary to the principles of compact prosecution as explained in MPEP 706 (“The goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity.”). Accordingly, tracking attributable owner information for patent applications and issued patents is directly relevant to questions of whether a claimed invention is patentable over the prior art during prosecution.

Moreover, the availability of new types of third-party proceedings that may be filed with the Office, including *inter partes* review under 35 U.S.C. 311 *et seq.* and post-grant review under 35 U.S.C. 321 *et seq.*, has created a need for the Office to collect and publish timely ownership information. Because of certain statutory deadlines imposing short time frames for action (*e.g.*, nine months after patent grant (35 U.S.C. 321(c)), it may often be impractical or impossible for third parties to discover ownership information through other means, such as through litigation between patent owners and third parties that would provide for discovery of such information. As discussed previously, ownership information may be relevant in determining the scope of prior art. Accordingly, providing accurate and up-to-date ownership information to the public is important to facilitate these post-issuance proceedings. In addition, requiring updated ownership information during post-issuance proceedings will facilitate examination for the same reasons discussed previously for examination of applications.

Accordingly, having updated ownership information would allow the Office to: (1) Verify that a *bona fide* third party is making the request for *inter partes* review or post-grant review, as required by 35 U.S.C. 311(a) and 321(a), respectively; (2) verify that the petitioner applying for review of a covered business method patent is a real-party-in-interest or privy to an entity that has been sued or charged with infringement of that patent, as required by 37 CFR 42.302(a); and (3) verify that a *bona fide* patent owner is making the request for supplemental examination, as required by 35 U.S.C. 257(a).

Finally, because the Office publishes information it possesses related to an application or patent (subject to 35 U.S.C. 122), the Office has an interest in ensuring that such information is not misleading. The Office currently receives (and publishes) only assignment information that is voluntarily submitted by the applicant or patent owner. There is no requirement that changes in assignment information be updated, though current law protects against certain types of fraud if such updating occurs. *See* 35 U.S.C. 261. Consequently the information the Office has on file may be outdated, which may be misleading to the public. Ensuring that the Office can provide information to the public that is not misleading is consistent with several statutory provisions directing the Office to disseminate information to the public as well as those directing the Office to provide access to information through electronic means. *See* 35 U.S.C. 2(a)(2) (creating a duty of “disseminating to the public information with respect to patents”); 10(a)(4) (providing for publication of information, including “annual indexes of . . . patentees”); 10(b) (allowing the Director to publish the specified information set forth in [item (4)] of subsection 35 U.S.C. 10(a) of this section in a publication format “desirable for the use of the Office”) and 41(i) (creating a duty to provide access to information electronically).

Beyond providing these benefits to the Office, collecting attributable owner information and making it publicly available may have other potential benefits. In particular, collecting attributable owner information and making it publicly available may: (1) Enhance competition and increase incentives to innovate by providing innovators with information that will allow them to better understand the competitive environment in which they operate; (2) enhance technology transfer and reduce the costs of transactions for

patent rights since patent ownership information will be more readily and easily accessible; (3) reduce risk of abusive patent litigation by helping the public defend itself against such abusive assertions by providing more information about all the parties that have an interest in patent or patent applications; and (4) level the playing field for innovators.

Regarding enhanced competition and increased incentives to innovate, easier access to accurate and up-to-date attributable owner information will provide innovators with information to better understand the competitive environment in which they operate. This will enable them to better assess, for example, the risks and benefits of developing a new business in a different area of technology, thereby allowing them to allocate their limited research and development resources more judiciously. Chapters 1 and 2 of the *FTC Report* discuss at length the advantages of ex-ante versus ex-post licensing. By providing the public with more and better information about ownership of patent rights earlier (particularly in advance of product launch and filling of distribution channels), innovators will be better positioned to seek rights ex-ante rather than ex-post, should they so desire.

Regarding enhancing technology transfer and reducing the costs of transactions for patent rights, providing easy access to accurate and up-to-date attributable owner information to the public is expected to reduce information and search costs associated with identifying and then licensing or buying patent assets.

With regard to reducing abusive patent litigation, developing a record of attributable owners will help accused patent infringers identify: (i) The parties who control and/or influence the ability to enter into a settlement agreement or licensing arrangement; and (ii) the full range of patent rights held by the attributable owners so that a license to all desired rights may be taken at once. This point is also reflected in the White House's *Fact Sheet: White House Task Force on High-Tech Patent Issues, Legislative Priorities & Executive Actions* (June 4, 2013), which notes that certain patent enforcement entities "set up shell companies to hide their activities" and this "tactic prevents those facing litigation from knowing the full extent of the patents that their adversaries hold." Accord, United States Government Accountability Office, *Intellectual Property: Assessing Factors That Affect Patent Infringement Litigation Could Help Improve Patent Quality*, available at [http://](http://www.gao.gov/products/GAO-13-465)

[www.gao.gov/products/GAO-13-465](http://www.gao.gov/products/GAO-13-465) (2013) (reporting that patent holders sometimes "intentionally hide the existence of their patents until a sector or company are using the patented invention without authorization and can be sued for infringement," and in some lawsuits, "the identity of interested operating companies is intentionally hidden." (pp. 20, 31)). Furthermore, providing the public with access to updated attributable owner information may help accused infringers determine whether a patent or application may be subject to fair, reasonable, and non-discriminatory (FRAND) licensing commitments.

*Request for Comments on the Voluntary Submission of Licensing Information:* The Office is also seeking public comment on enabling patent applicants and owners to voluntarily report licensing offers and related information for the Office to make available to the public. The Office currently permits patent owners to request that their patents be listed in the Official Gazette as available for license or sale, upon payment of the fee set forth in 37 CFR 1.21(i). See MPEP 1703. For examples of such listings, see (<http://www.uspto.gov/web/offices/com/sol/og/2012/week02/TOC.htm#ref18>) (Jan. 10, 2012) and (<http://www.uspto.gov/web/offices/com/sol/og/patlics.htm>) (Dec. 11, 2007). The Office seeks public comment on whether the Office should also, or alternatively, permit patent applicants and owners to voluntarily provide information about licensing for the Office to make available to the public in, for example, a searchable online database or Public PAIR. Such licensing information could include willingness to license, as well as licensing contacts, license offer terms, or commitments to license the patent, e.g., on royalty-free or reasonable and non-discriminatory terms. In accordance with best practices in technology transfer, this information could also include permitting a patent applicant or owner to include keywords, technical fields, and/or descriptive information about the underlying technology, related technical papers and publications, and desired attributes in a technology partner (see, e.g. <http://www.federalallabs.org/>).

The Office believes that the implementation of such a voluntary program would further enhance the transparency and efficiency of the marketplace for patent rights by providing a clearinghouse for patent holders to post licensing terms. Such a system would be expected to further enhance technology transfer and reduce the costs of transactions for patent

rights. The World Intellectual Property Organization (WIPO) has offered a similar option to report licensing terms and information to PCT applicants since January 2012, in order to promote voluntary licensing. In November 2013, it introduced the WIPO GREEN online marketplace, to promote innovation and diffusion of green technologies. (<https://webaccess.wipo.int/green/>).

*Attributable Owner Information To Be Collected:* The Office is proposing that the attributable owner be identified on filing (or shortly thereafter), when there is a change of attributable owner during the pendency of an application, at the time of issue fee and maintenance fee payments, and when a patent is involved in supplemental examination, *ex parte* reexamination, or a trial proceeding before the Patent Trial and Appeal Board (PTAB). The Office proposes to collect two basic types of attributable owner information: (1) Titleholders and (2) enforcement entities. The attributable owner would also include the ultimate parent entity as defined in 16 CFR 801.1(a)(3) of either of these two types of attributable owner. In addition, any entity that creates or uses any type of arrangement or device with the purpose or effect of temporarily divesting such entity of attributable ownership or preventing the vesting of such attributable ownership would also be considered an attributable owner. Each of the attributable owner types and corresponding "ultimate parent entity" are discussed in greater detail as follows.

In many cases, these types of ownership interests may be coextensive. Specifically, the titleholder (or assignee) is often the same entity that has the right to enforce the patent, and is not controlled by any other entity (and so would not have to separately report an ultimate parent entity). Most additional reporting will need to be done by companies that have complicated corporate structures and licenses, which often include the complex structures used by certain patent assertion entities ("PAEs") to hide their true identities from the public. Some of this additional reporting may include exclusive licensees. Although exclusive licensees are sometimes confidential now, they would only need to be disclosed where their rights are so substantial that they have enforcement rights in the patent. In such circumstances, the public has a strong interest in knowing their identities in order to have an accurate picture of the competitive patent landscape, to allocate their research and development efforts appropriately, and to take licenses or purchase patents proactively and efficiently from the

correct entities, as dictated by business needs.

The Office proposes to collect this attributable owner information from applicants and patent owners, and invites public comments as to whether and when additional attributable owner information should be collected as well as whether changes could be made to the scope of the information proposed to be collected while still achieving the objectives of the Office set forth in this document.

The Office is proposing to require disclosure of the following ownership interests:

**1. Titleholders:** The first type of attributable owner information the Office proposes to collect is comprised of the titleholder(s) of the patent application or issued patent. Titleholders are defined as an entity that has been assigned title to the patent or application. This proposed requirement overlaps with the information that applicant and patent owners currently may voluntarily submit for assignment recordation at the Office. Reporting of exclusive licensees might be required in the limited circumstances where the exclusive license transfers so many rights that it is effectively an assignment, but the Office expects that exclusive licensee information would more routinely be reported under the second type of ownership information the Office proposes to collect (entities that have standing to enforce). *See, e.g., Alfred C. Mann Found. v. Cochlear Corp.*, 604 F.3d 1354, 1360–61 (Fed. Cir. 2010).

**2. Enforcement Entities:** The second type of attributable owner information the Office proposes to collect is comprised of those entities not already identified as titleholders, but who are necessary to be joined in a lawsuit in order to have standing to enforce the patent or any patent resulting from the application. The entities having the legal right to enforce the patent refers to those parties that would be necessary and sufficient to bring a legal infringement action. *See Vaupel Textilmaschinen KG v. Meccanica EuroItalia SPA*, 944 F.2d 870, 875–76 (Fed. Cir. 1991). This proposed reporting requirement would require disclosure of exclusive licensees in certain cases.

**Ultimate Parent Entities:** Information required to be reported for each type of attributable owner would also include identification of the ultimate parent entity, *i.e.*, the entity that ultimately controls the actions of any entities discussed previously, if they are not their own ultimate parents. The term “ultimate parent entity” is defined by

reference to the definition (an entity which is not controlled by any other entity) along with the accompanying examples set forth in 16 CFR 801.1(a)(3). The Office is proposing incorporation by reference of the definition of ultimate parent entity in 16 CFR 801.1(a)(3) but would welcome comments on how this definition might be modified for use at the Office. The Office recognizes that corporations sometimes transfers patents and patent applications within the corporation for legitimate reasons, such as tax savings purposes, and also welcomes comments on the impact of the proposed changes on this practice.

**Hidden Beneficial Owners:** Information required to be reported would also include identification of entities that are trying to avoid the need for their disclosure by temporarily divesting themselves of ownership rights through contractual or other arrangements. The Office deems the beneficiaries of these temporarily divested rights to be attributable owners. The Office seeks to have a complete picture of the attributable owners for the numerous reasons detailed in this document, and this provision is designed to discourage intentional shielding of such ownership interests.

As discussed previously, the Office expects that this information will facilitate the Office’s core function of examining patents. All of the ownership interests outlined previously will help the Office to avoid potential conflicts of interest, as required by regulation and statute, and the quasi-judicial roles of patent examiners. For example, the attributable owner information would allow Office employees to evaluate whether they own stock in companies that are appearing before them in patent examination or other Office proceedings. The related ultimate parent entity information would serve as an additional check to the extent that Office employees might not be aware of subsidiaries owned by companies in which they might own stock.

Information about the titleholder and its ultimate parent entity will also help the Office to determine the scope of prior art under the common ownership exception under 35 U.S.C. 102(b)(2)(C), to uncover instances of double patenting, and ensure that the power of attorney is current in applications under examination. The ultimate parent entity information in particular would facilitate searching by providing a common identifier for companies that have many subsidiaries that nominally hold title to the application or patent.

The Office plans to publish information about attributable owners in

accordance with its duty to provide information to the public, 35 U.S.C. 2(a)(2), although such information will be made available only in accordance with 35 U.S.C. 122. The Office expects that the public provision of attributable owner information will increase transparency of the patent system, as outlined in the background section of this document.

The Office is proposing the following timing and handling of disclosures:

**Timing of Attributable Owner Information Collection:** For the purposes discussed previously, the Office proposes to collect information at the following points during prosecution and post-issuance so that the Office will have access to accurate and up-to-date information and will be able to provide such information to the public.

**During Patent Prosecution:** The Office proposes the following attributable owner reporting requirements for pending applications: (1) *Application Filing Requirement:* The applicant would be required to identify the attributable owner at the time a patent application is initially filed (or shortly thereafter); (2) *Update Requirement:* The applicant would be required to identify a new attributable owner during prosecution within three months of any change in attributable owner; and (3) *Issue Fee Payment Requirement:* The applicant would be required to identify the attributable owner (or verify that the attributable owner information currently on record at the Office is correct) at the time of issue fee payment. The requirement to identify the attributable owner would not apply to provisional applications, and would not apply to international applications prior to the commencement of the national stage in the United States. The Office welcomes comments on whether there are other times during prosecution (*e.g.*, with each reply to an Office action) where updating or verification of attributable owner information should be required, and on whether within three months of any change in attributable owner is the appropriate time frame (*i.e.*, should the time frame be more or less than three months?).

**After Patent Issuance:** The Office proposes the following attributable owner reporting requirements for issued patents: (1) *Maintenance Fee Requirement:* The patent owner would be required to identify the attributable owner (or verify that the attributable owner information currently on record at the Office is correct) at the time each maintenance fee is paid; and (2) *Post-Issuance Proceeding Requirement:* The patent owner would be required to identify the attributable owner (or verify

that the attributable owner information currently on record at the Office is correct) at the time the patent becomes involved in certain post-issuance proceedings before the Office, including (1) any trial proceeding before the PTAB, such as any post grant review under 35 U.S.C. 321, *inter partes* review under 35 U.S.C. 311, covered business method patent review under section 18 of the AIA, or derivation proceeding under 35 U.S.C. 135; (2) any request for supplemental examination under 35 U.S.C. 257(a); and (3) any *ex parte* reexamination proceeding under 35 U.S.C. 302.

**Provision of Attributable Owner Information to the Public:** While the Office would use attributable owner information for examination purposes in both published and unpublished applications, attributable owner information would be made available to the public in an application that has been published under 35 U.S.C. 122(b) or issued as a patent under 35 U.S.C. 151. The Office anticipates providing information about the current attributable owner, as well as a history of any attributable owner changes, in an accessible electronic format, such as via the public side of the Patent Application Information Retrieval (PAIR) system.

### Discussion of Specific Rules

The following is a discussion of proposed amendments to title 37 of the Code of Federal Regulations, Part 1:

**Section 1.17:** Section 1.17(g) is proposed to be amended to include a reference to proposed §§ 1.279 and 1.387. Sections 1.279 and 1.387 as proposed provide for a petition and the petition fee set forth in § 1.17(g) if the applicant or patent owner has failed to notify the Office of a change to the attributable owner, or has indicated an incorrect or an incomplete attributable owner, despite a good faith effort to comply with these requirements.

**Section 1.271:** Section 1.271 as proposed defines the entity or entities that are covered by the term “attributable owner” as that term is used in the rules of practice. Section 1.271(a) as proposed specifically provides that the attributable owner includes each of the following entities: (1) An entity that, exclusively or jointly, has been assigned title to the patent or application (proposed § 1.271(a)(1)); and (2) an entity necessary to be joined in a lawsuit in order to have standing to enforce the patent or any patent resulting from the application (proposed § 1.271(a)(2)).

Section 1.271(b) as proposed provides that the attributable owner of a patent or application includes the ultimate parent

entity as defined in 16 CFR 801.1(a)(3) of an entity described in § 1.271(a). The ultimate parent entity is an entity which is not controlled by any other entity. 16 CFR 801.1(a) provides the following illustrative examples for identifying the ultimate parent entity: “(1) If corporation A holds one hundred percent of the stock of subsidiary B, and B holds seventy-five percent of the stock of its subsidiary C, corporation A is the ultimate parent entity, since it controls subsidiary B directly and subsidiary C indirectly, and since it is the entity within the person which is not controlled by any other entity; (2) if corporation A is controlled by natural person D, natural person D is the ultimate parent entity; and (3) if P and Q are the ultimate parent entities within persons ‘P’ and ‘Q,’ and P and Q each own fifty percent of the voting securities of R, then P and Q are both ultimate parents of R, and R is part of both persons ‘P’ and ‘Q.’”

With regard to the definition of “ultimate parent entity” as “an entity which is not controlled by any other entity,” 16 CFR 801.1(b) defines “control” as follows: The term control (as used in the terms control(s), controlling, controlled by and under common control with) means: (1) Either (i) holding fifty percent or more of the outstanding voting securities of an issuer, or (ii) in the case of an unincorporated entity, having the right to fifty percent or more of the profits of the entity, or having the right in the event of dissolution to fifty percent or more of the assets of the entity; or (2) having the contractual power presently to designate fifty percent or more of the directors of a for-profit or not-for-profit corporation, or in the case of trusts that are irrevocable and/or in which the settlor does not retain a reversionary interest, the trustees of such a trust. 16 CFR 801.1(b) further provides a number of illustrative examples for identifying the ultimate parent entity based upon its definition of “control.”

Section 1.271(c) as proposed provides that any entity that, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of temporarily divesting such entity of attributable ownership of a patent or application, or preventing the vesting of such attributable ownership of a patent or application, shall also be deemed for the purpose of § 1.271 to be an attributable owner of such patent or application.

Section 1.271(d) as proposed defines the term “entity” used in § 1.271. Section 1.271(d) as proposed

specifically provides that the term “entity” used in § 1.271 includes: (1) Any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, or institution, whether incorporated or not, wherever located and of whatever citizenship (proposed § 1.271(d)(1)); (2) any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the entities described in § 1.271(d)(1), in his or her capacity as such (proposed § 1.271(d)(2)); (3) a joint venture or other corporation which has not been formed but the acquisition of the voting securities or other interest in which, if already formed, would be an attributable owner as described in this section (proposed § 1.271(d)(3)); or (4) any other organization or corporate form not specifically listed in § 1.271(d)(1), (d)(2), or (d)(3) that holds an interest in an application or patent (proposed § 1.271(d)(4)). Section 1.271(d) as proposed (in combination with the exception in proposed § 1.271(e)) tracks the definition of entity in 16 CFR 801.1(a)(2).

Section 1.271(e) as proposed provides an “exception” to the term “entity” as used in § 1.271. Section 1.271(e) as proposed specifically provides that, notwithstanding the provisions of § 1.271(c), the term “entity” does not include any foreign state, foreign government, or agency thereof (other than a corporation or unincorporated entity engaged in commerce), and also does not include the United States, any of the States thereof, or any political subdivision or agency of either (other than a corporation or unincorporated entity engaged in commerce).

Section 1.271(f) as proposed sets out the information concerning an entity that must be provided when that entity is being identified as an attributable owner. Section 1.271(f) as proposed specifically provides that when there is a requirement to identify the attributable owner, each entity constituting the attributable owner must be identified as follows: (1) The identification of a public company must include the name of the company, stock symbol, and stock exchange where the company is listed (proposed § 1.271(f)(1)); (2) the identification of a non-public company must include the name of the company, place of incorporation, and address of the principal place of business (proposed § 1.271(f)(2)); (3) the identification of a partnership must include the name of the partnership and address of the principal place of business (proposed § 1.271(f)(3)); (4) the identification of a

natural person must include the full legal name, residence, and a correspondence address (proposed § 1.271(f)(4)); and (5) the identification of any other type of entity must include its name, if organized under the laws of a state, the name of that state and legal form of organization, and address of the principal place of business (proposed § 1.271(f)(5)).

Section 1.271(g) is proposed to clarify that a shareholder or partner in a corporate form, partnership, or other association (except for shareholders of a public company) must also be identified as an attributable owner if the shareholder or partner meets one of the definitions set forth in § 1.271(a), (b), or (c), even if the a corporate form, partnership, or other association is separately identified as an attributable owner.

*Section 1.273:* Section 1.273 as proposed requires the applicant to identify the attributable owner (the “initial” attributable owner) on filing or within the time period provided in § 1.53(f) (provides for the completion of an application under 35 U.S.C. 111(a) for examination) or § 1.495(c) (provides for the submission of missing requirements in an international application that commenced the national stage under 35 U.S.C. 371). Section 1.273 as proposed specifically provides that the attributable owner must be identified in each application under 35 U.S.C. 111(a), including a reissue application, and in each international application that commenced the national stage under 35 U.S.C. 371(b) or (f). The requirements of proposed § 1.273 would not apply to provisional applications under 35 U.S.C. 111(b), and would not apply to international applications prior to the commencement of the national stage under 35 U.S.C. 371(b) or (f). Section 1.273 as proposed also provides that if an application under 35 U.S.C. 111(a) which has been accorded a filing date pursuant to § 1.53(b) or (d) does not identify the attributable owner, or if an international application which complies with § 1.495(b) does not identify the attributable owner, the applicant will be notified and given a period of time within which to file a notice identifying the attributable owner to avoid abandonment. Section 1.273 as proposed also provides that the notice by the Office under § 1.273 may be combined with a notice under § 1.53(f) (providing for the completion of an application under 35 U.S.C. 111(a) for examination) or § 1.495(c) (providing for the filing of missing requirements in an international application that commenced the national stage under 35

U.S.C. 371). Thus, the applicant must identify the attributable owner on filing or in reply to a notice setting a time period within which the attributable owner must be identified. The Office generally issues a notice under § 1.53(f) (if necessary) within one to two months of the filing date of an application and sets a two-month time period for an applicant to comply with the requirements in the notice under § 1.53(f). The two-month time period for an applicant to comply with the requirements in the notice under § 1.53(f) may be extended under § 1.136(a) by up to five months. Thus, this process would permit an applicant up to eight months from the filing date of an application to provide the attributable ownership information. The failure to identify the attributable owner within the time period set under § 1.273 would result in abandonment of the application. An applicant would be able to revive an application abandoned for failure to identify the attributable owner within the time period set under § 1.273 under the provisions of § 1.137, provided that the failure to identify the attributable owner was unintentional.

The Office is proposing making this requirement applicable to applications under 35 U.S.C. 111(a) filed on or after the effective date of the final rule and to international applications that commenced the national stage under 35 U.S.C. 371(b) or (f) on or after the effective date of the final rule.

*Section 1.275:* Section 1.275 as proposed addresses the procedure to be followed if there is a change in attributable owner during the pendency of an application under 35 U.S.C. 111(a) or the pendency of an international application which complies with § 1.495(b). The requirements of proposed § 1.275 would not apply to provisional applications under 35 U.S.C. 111(b), and would not apply to international applications prior to the commencement of the national stage under 35 U.S.C. 371(b) or (f). Section 1.275 as proposed specifically provides that if there is such a change during the pendency of an application, the applicant has three months (non-extendable) from the date of the change to the attributable owner within which to file a notice identifying the current attributable owner.

The Office is proposing making this requirement applicable to applications under 35 U.S.C. 111(a) filed on or after the effective date of the final rule and to international applications that commenced the national stage under 35 U.S.C. 371(b) or (f) on or after the effective date of the final rule.

*Section 1.277:* Section 1.277 as proposed requires applicants to confirm that attributable owner information on record at the Office is accurate, or to provide updated information. Section 1.277 as proposed specifically provides if a notice of allowance under § 1.311 has been sent to the applicant, and if the attributable owner information on record at the Office is no longer correct, that the applicant must file a notice identifying the current attributable owner within three months (non-extendable) from the date of the mailing of the notice of allowance. If the attributable owner information on record at the Office is still correct, applicants can simply confirm that there have been no changes. To this end, the Office plans to provide a checkbox on the notice of allowance (PTOL-85b) (or checkbox via the electronic filing system) so that if the information on record at the Office remains correct, an applicant may simply check a box to so indicate. The failure to either update or confirm within three months (non-extendable) from the date of mailing of the notice of allowance would result in abandonment of the application. An applicant would be able to revive an application abandoned for failure to complete this action under the provisions of § 1.137, provided that the failure was unintentional.

The Office is proposing making this requirement applicable to applications in which a notice of allowance under 35 U.S.C. 151 and 1.311 is mailed on or after the effective date of the final rule.

*Section 1.279:* Section 1.279 as proposed provides for the situation in which the applicant has failed to notify the Office of a change to the attributable owner, or has indicated an incorrect or an incomplete attributable owner, despite a good faith effort to comply with these requirements. Section 1.279 as proposed specifically provides that if, despite a good faith effort by the applicant to notify the Office of the initial attributable owner, and of any changes to the attributable owner, in the manner required by §§ 1.273, 1.275, and 1.277, the failure or error may be excused in a pending application on petition accompanied by a showing of reason for the delay, error, or incompleteness and the petition fee set forth in § 1.17(g).

Section 1.279 as proposed is limited to excusing failure or errors in a pending application. Where there has been a failure to identify the attributable owner within the time period set under § 1.273, or after mailing the notice of allowance, a failure either to confirm that the information on file at the Office is correct, or to identify the current

attributable owner within three months (non-extendable) from the date of mailing under § 1.277, that has resulted in abandonment of an application, the applicant's remedy (if the failure was unintentional) is by way of a petition to revive the abandoned application under the provisions of § 1.137.

**Section 1.381:** Section 1.381 as proposed provides for a patent holder to either: (1) Identify the current attributable owner prior to each maintenance fee payment; or (2) confirm prior to each maintenance fee payment that there has been no change to the attributable owner information most recently provided to the Office. Section 1.381 as proposed specifically provides that a notice identifying the current attributable owner must be filed within the period specified in § 1.362(d) or (e), but prior to the date the maintenance fee is paid, for each maintenance fee. Section 1.381 as proposed does not require that the notice be provided concurrently with the maintenance fee payment as the Office appreciates that maintenance fee payments are often provided as bulk payments in an automated fashion by a third party. Rather, § 1.381 as proposed provides a considerable "window" (within the six-month payment window in § 1.362(d) or the six-month surcharge window in § 1.362(e), but prior to the date the maintenance fee is paid) within which a notice identifying the current attributable owner must be provided. The Office welcomes comments on how to collect attributable owner information at the time of each maintenance fee, particularly in light of this practice of maintenance fee submission in bulk by third parties.

Section 1.381 as proposed also provides that if there has been no change to the attributable owner information most recently provided to the Office, the notice may simply indicate that there has been no change. The Office plans to provide a means (automated or a pre-printed form) such that if the current attributable owner has been previously provided to the Office, the patent owner may simply check the box or submit a pre-printed form to indicate that there has been no change to the attributable owner. Thus, a patent owner who provides updated attributable owner information whenever there is a change to the attributable owner during the life of the patent may simply check the box or submit a pre-printed form to indicate that there has been no change to the attributable owner.

The Office is proposing making this requirement applicable to patents in

which a maintenance fee is paid on or after the effective date of the final rule.

**Section 1.383:** Section 1.383 as proposed requires the patent holder to identify the current attributable owner for any patents involved in a PTAB trial proceeding. Section 1.383 as proposed specifically provides that the mandatory notice filed by a patent owner as required by § 42.8(a)(2) must also be accompanied by a notice identifying the current attributable owner. Section 42.8 requires that the petitioner and the patent owner each file a notice identifying (*inter alia*) each real party in interest owner for the party. *See* § 42.8(b)(1). Proposed § 1.383 differs from the current requirement in § 42.8 to identify each real party in interest in that proposed § 1.383: (1) Requires identification of each attributable owner (defined in § 1.271), rather than real party in interest; and (2) applies only to a patent owner. Section 1.383 as proposed further provides that if there is a change to the attributable owner during the pendency of the trial, the patent owner has twenty-one days (non-extendable) from the date of the change within which to file a notice identifying the current attributable owner. Section 1.383 provides a twenty-one-day period, rather than a three-month period, for updating any changes in attributable owners for a patent involved in a PTAB proceeding because § 42.8 requires that a notice must be filed with the Board within twenty-one days of a change in the information that is required to be in the mandatory notice. *See* 42.8(a)(3).

The Office is proposing making this requirement applicable to any trial proceeding in which the petition was filed on or after the effective date of the final rule.

**Section 1.385:** Section 1.385 as proposed requires a patent holder to identify the current attributable owner in a request for supplemental examination and during *ex parte* reexamination proceedings.

Section 1.385(a) as proposed pertains to supplemental examination. Section 1.385(a) as proposed provides that a request for supplemental examination under § 1.610 must also be accompanied by a notice identifying the current attributable owner. Thus, a request for supplemental examination would not be accorded a filing date unless it is accompanied by a notice identifying the current attributable owner. A request for supplemental examination may be filed only by the patent owner and a supplemental examination proceeding will not last longer than three months (35 U.S.C. 257(a)). Therefore, there are no provisions for a request for supplemental examination by a party

other than the patent owner or for a change to the attributable owner during a supplemental examination.

Section 1.385(b) as proposed pertains to a request for *ex parte* reexamination by the patent holder. Section 1.385(b) as proposed specifically provides that a request for *ex parte* reexamination under § 1.510 by the patent holder must also be accompanied by a notice identifying the current attributable owner. Thus, a request for *ex parte* reexamination by the patent owner would not be accorded a filing date unless it is accompanied by a notice identifying the current attributable owner.

Section 1.385(c) as proposed pertains to a request for *ex parte* reexamination in which the patent owner has not identified the current attributable owner because the request was filed by a third party rather than the patent holder. Section 1.385(c) as proposed specifically provides that a reply or any other paper filed by the patent holder in an *ex parte* reexamination proceeding must be accompanied by a notice identifying the current attributable owner, unless such a notice has previously been filed by the patent holder. Thus, a reply by the patent holder in an *ex parte* reexamination would be considered incomplete unless it is accompanied by a notice identifying the current attributable owner, or unless such a notice has previously been filed. The phrase "unless such a notice has previously been filed by the patent owner" covers the situations in which: (1) The request for *ex parte* reexamination was by the patent holder and the patent holder identified the current attributable owner in the request for *ex parte* reexamination; or (2) the current attributable owner was identified in a previous reply by the patent holder. Section 1.385(c) as proposed further provides that if there is a change to the attributable owner during the pendency of the reexamination proceeding, the patent holder has three months (non-extendable) from the date of the change to the attributable owner within which to file a notice identifying the current attributable owner.

The Office is proposing making this requirement applicable to any supplemental examination or *ex parte* reexamination in which the request was filed on or after the effective date of the final rule.

**Section 1.387:** Section 1.387 as proposed addresses the situation in which the patent holder has failed to notify the Office of a change to the attributable owner, or has indicated an incorrect or an incomplete attributable



owner, despite a good faith effort to comply with these requirements. Section 1.387 as proposed specifically provides that if, despite a good faith effort by the patent holder to notify the Office of the initial attributable owner, and of any changes to the attributable owner, in the manner required by §§ 1.273, 1.275, 1.277, 1.381, 1.383, and 1.385, the failure or error may be excused on petition accompanied by a showing of reason for the delay, error, or incompleteness and the petition fee set forth in § 1.17(g). Thus, proposed § 1.387 would be the applicable provision for corrections in an issued patent, regardless of whether the failure or error occurred during the application process (*i.e.*, there was a failure to comply with §§ 1.273, 1.275, or 1.277) or after the patent issued (*i.e.*, there was a failure to comply with §§ 1.381, 1.383, and 1.385).

### Rulemaking Considerations

#### A. Administrative Procedure Act

This document proposes to require that the attributable owner, including the ultimate parent entity, be identified during the pendency of a patent application and at specified times during the life of a patent. The changes in this rulemaking do not change the substantive criteria of patentability and also do not place any limits or conditions on the patent owner's ability to transfer ownership of, or any other interest in, a patent or patent application. Therefore, the changes proposed in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Bachow Commc'ns Inc. v. F.C.C.*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). *See Cooper Techs.*, 536 F.3d at 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice”) (quoting 5 U.S.C. 553(b)(A)). The Office, however, is publishing all of these proposed changes as it seeks the benefit of the public's views on the Office's proposed implementation.

#### B. Initial Regulatory Flexibility Analysis

##### 1. Description of the Reasons That Action By the Agency Is Being Considered

The Office is proposing to amend the rules of patent practice to provide greater transparency concerning the ownership of pending patent applications and patents. The purpose of this rulemaking is to ensure the highest-quality patents, to facilitate patent examination at the Office, to enhance competition and increase incentives to innovate by providing innovators with information that will allow them to better understand the competitive environment in which they operate, enhance technology transfer and reduce the costs of transactions for patent rights by making patent ownership information more readily and easily available, to reduce risk of abusive patent litigation by helping the public defend itself against risk of abusive assertions by providing more information about the parties that have an interest in patents or patent applications, and to level the playing field for innovators.

##### 2. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rules

The objective of the proposed rules is to provide greater transparency concerning the ownership of pending patent applications and patents to facilitate patent examination at the Office by requiring that the attributable owner, including the ultimate parent entity, be identified during the pendency of a patent application and at specified times during the life of a patent, and to further ensure that the ownership information the Office provides to the public is accurate and not misleading.

The proposed changes to require patent applicants and patent owners to regularly update ownership information when the applicant or patent owner is involved in a proceeding before the Office will facilitate patent examination and other parts of the Office's internal processes by helping to: (1) Ensure that a “power of attorney” is current in each application or proceeding before the Office; (2) avoid potential conflicts of interest for Office personnel; (3) determine the scope of prior art under the common ownership exception under 35 U.S.C. 102(b)(2)(C) and uncover instances of double patenting; (4) verify that the party making a request for a post-issuance proceeding is a proper party for the proceeding; and (5) ensure that the information the Office provides to the public concerning published

applications and issued patents is accurate and not misleading.

Beyond providing these benefits to the Office, collecting attributable owner information and making it available may: (1) Enhance competition and increase incentives to innovate by providing innovators with information to allow them to better understand the competitive environment in which they operate; (2) enhance technology transfer and reduce the costs of transactions for patent rights since patent ownership information will be more readily and easily accessible; (3) help the public defend itself against abusive patent assertion or litigation by providing more information about all the parties that have an interest in the patent or patent application; and (4) level the playing field for innovators.

The legal basis for the proposed rules is 35 U.S.C. 2(b)(2), which authorizes the Office to establish regulations, not inconsistent with law, which “govern the conduct of proceedings in the Office.” 35 U.S.C. 2(a)(2)(A); see also *Star Fruits S.N.C.*, 393 F.3d at 1282 (quoting 35 U.S.C. 2(b)(2)), and *Cooper Techs.*, 536 F.3d at 1335 (“To comply with section 2(b)(2)(A), a Patent Office rule must be ‘procedural’—*i.e.*, it must ‘govern the conduct of proceedings in the Office.’”). Pursuant to this authority, the Office may require the submission of attributable owner information that is reasonably necessary to proper examination or treatment of the matter at hand, provided that such requests are not arbitrary or capricious. *See Star Fruits*, 393 F.3d at 1283–84.

Further legal basis for the proposed rule comes from 35 U.S.C. 2(a). Because the Office publishes information it possesses related to an application or patent (subject to 35 U.S.C. 122), the Office has an interest in ensuring that such information is not misleading. The Office currently receives (and publishes) only assignment information that is voluntarily submitted by the applicant or patent owner. There is currently no requirement that changes in assignment information be updated, though current law protects against certain types of fraud if such updating occurs. *See* 35 U.S.C. 261. Consequently, the information the Office has on file may be outdated, which may be misleading to the public. Ensuring that the Office can provide information to the public that is not misleading is consistent with several statutory provisions directing the Office to disseminate information to the public as well as those directing the Office to provide access to information through electronic means. *See* 35 U.S.C. 2(a)(2) (creating a duty of “disseminating to the public



information with respect to patents"); 10(a)(4) (providing for publication of information, including "annual indexes of . . . patentees"); 10(b) (allowing the Director to publish the specified information set forth in item (4) of subsection 35 U.S.C. 10(a) of this section in a publication format "desirable for the use of the Office") and 41(i) (creating a duty to provide access to information electronically).

### 3. Description and Estimate of the Number of Affected Small Entities

*A. Size Standard and Description of Entities Affected.* The Small Business Administration (SBA) small business size standards applicable to most analyses conducted to comply with the Regulatory Flexibility Act are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with fewer than a specified maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. As provided by the Regulatory Flexibility Act, and after consultation with the Small Business Administration, the Office formally adopted an alternate size standard as the size standard for the purpose of conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations*, 71 FR 67109 (Nov. 20, 2006), 1313 Off. Gaz. Pat. Office 60 (Dec. 12, 2006). This alternate small business size standard is SBA's previously established size standard that identifies the criteria entities must meet to be entitled to pay reduced patent fees. *See* 13 CFR 121.802. If patent applicants identify themselves on a patent application as qualifying for reduced patent fees, the Office captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the Office.

Unlike the SBA small business size standards set forth in 13 CFR 121.201, the size standard for the Office is not industry-specific. Specifically, the Office's definition of small business concern for Regulatory Flexibility Act purposes is a business or other concern that: (1) Meets the SBA's definition of a "business concern or concern" set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely, an entity: (a) Whose number of employees,

including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations*, 71 FR at 67112, 1313 Off. Gaz. Pat. Office at 63.

*B. Estimate of Number of Entities Affected.* The proposed rules will apply to all entities, including small or micro entity patent applicants or patent owners, that: (1) File a patent application; (2) change attributable owners during the pendency of a patent application; (3) pay an issue fee in an allowed application; (4) pay a maintenance fee for a patent; (5) file a request for supplemental examination under 35 U.S.C. 257(a); (6) file a request for *ex parte* reexamination under 35 U.S.C. 302; or (7) have a patent involved in a third-party requested *ex parte* reexamination under 35 U.S.C. 302, or a trial proceeding before the PTAB, such as any post grant review under 35 U.S.C. 321, *inter partes* review under 35 U.S.C. 311, covered business method patent review under section 18 of the AIA, or derivation proceeding under 35 U.S.C. 135.

Based upon the information in the Office's PALM system, the Office received approximately 437,000 new applications (including continuing applications but not requests for continued examination) in fiscal year 2013, of which approximately 131,000 were by small or micro entity applicants. Thus, the Office estimates that 437,000 patent applicants, of which 131,000 are small or micro entities, will need to provide attributable owner information each year due to the requirement to identify the attributable owner at the time a patent application is initially filed (or shortly thereafter).

Based upon the information in the Office's PALM system, there are approximately 1,249,000 patent applications currently (in October of 2013) pending before the Office, of which 337,000 are by small or micro entity applicants. Since the Office does not currently require applicants and patent holders to disclose changes in the attributable owner of an application or patent, the Office does not have information on how often there is a change in attributable owner of an application during the pendency of a patent application. The Office's

assignment records, however, indicate that about ninety-two percent of applications have recorded assignment documents at the time of patent grant, but fewer than four percent of applications have a second recorded assignment document each year reflecting some type of ownership transfer during the pendency of a patent application. The high percentage of patent applicants who currently submit an assignment document for recordation and the relatively low percentage of patent applicants who submit a second assignment document for recordation leads to the inference that changes in ownership during the pendency of a patent application are relatively infrequent (*e.g.*, changes in ownership will occur in fewer than four percent of applications each year). Thus, the Office estimates that 50,000 (four percent of 1,249,000, rounded up to the nearest thousand) patent applicants, of which 14,000 (four percent of 337,000, rounded up to the nearest thousand) are small or micro entities, will need to update attributable owner information each year due to the requirement to update attributable owner information when there is a change in ownership during the pendency of a patent application.

Based upon the information in the Office's Revenue Accounting Management (RAM) system, the Office received the following fee payments in fiscal year 2013: (1) 296,481 issue fee payments (68,574 by small or micro entity applicants); (2) 153,875 first stage maintenance fee payments (27,076 by small or micro entity patent owners); (3) 99,249 second stage maintenance fee payments (16,692 by small or micro entity patent owners); and (4) 75,470 third stage maintenance fee payments (11,273 by small or micro entity patent owners). Thus, the Office estimates that 297,000 (266,481 rounded up to the nearest thousand) patent applicants, of which 69,000 (68,574 rounded up to the nearest thousand) are small or micro entities, will need to update attributable owner information each year due to the requirement to identify the attributable owner (or verify that the current attributable owner has been previously identified) at the time of issue fee payment, and the Office estimates that 329,000 (153,875 plus 99,249 plus 75,470, rounded up to the nearest thousand), of which 55,000 (27,076 plus 16,692 plus 11,273, rounded up to the nearest thousand) are small or micro entities, will need to update attributable owner information each year due to the requirement to identify the attributable owner (or verify that the attributable

owner information currently on record at the Office is correct) at the time each maintenance fee is paid.

Based upon the information from the Office's Central Reexamination Unit, there are fewer than 800 requests for *ex parte* reexamination filed each year. In addition, the Office's assignment records show that fewer than three percent of the patents in force have a recorded assignment document reflecting some type of ownership transfer during the life of the patent, which leads to the inference that changes in ownership during the life of a patent are relatively infrequent (*e.g.*, changes in ownership will occur in fewer than three percent of patents). Thus, the Office estimates that approximately 1,000 (800 plus three percent of 800 (800 plus 24) rounded up to the nearest thousand) patent owners will need to update attributable owner information each year due to the requirement to identify the attributable owner (or verify that the real party in interest information currently on record at the Office is correct) in an *ex parte* reexamination proceeding or when there is a change in ownership during an *ex parte* reexamination proceeding.

The supplemental examination provisions have been enacted as part of the AIA. The Office has received thirty-one requests for supplemental examination since September 16, 2012, the effective date of the supplemental examination provisions of the AIA. Thus, the Office estimates that approximately 100 (31 rounded up to the nearest hundred) patent owners will need to update attributable owner information each year due to the requirement to identify the attributable owner (or verify that the real party in interest information currently on record at the Office is correct) at the time the patent owner files a request for supplemental examination.

The PTAB trial provisions (post grant review under 35 U.S.C. 321, *inter partes* review under 35 U.S.C. 311, covered business method patent review under section 18 of the AIA, or derivation proceedings under 35 U.S.C. 135) have been enacted as part of the AIA. The Office received 563 petitions for a PTAB trial proceeding during fiscal year 2013, but received between eighty and one hundred petitions for a PTAB trial proceeding during each of August, September, and October of 2013. Thus, the Office estimates that approximately 2,000 (100 per month multiplied by 12 months (1,200) plus three percent of 1200 (1,200 plus 360), rounded up to the nearest thousand) patent owners will need to update attributable owner information each year based upon the

filing of a petition for a PTAB trial proceeding.

*Summary of Number of Entities Affected:* Based upon the foregoing, the Office estimates that: (1) 437,000 (131,000 small or micro entity) patent applicants will need to provide attributable owner information each year due to the requirement to identify the attributable owner at the time a patent application is initially filed (or shortly thereafter); (2) 50,000 (14,000 small or micro entity) patent applicants will need to update attributable owner information each year due to the requirement to update attributable owner information when there is a change in ownership during the pendency of a patent application; (3) 297,000 (69,000 small or micro entity) patent applicants will need to update attributable owner information each year due to the requirement to identify the attributable owner (or verify that the current attributable owner information on record at the Office is correct) at the time of issue fee payment; (4) 329,000 (55,000 small or micro entity) patent owners will need to update attributable owner information each year due to the requirement to identify the attributable owner (or verify that the attributable owner information currently on record at the Office is correct) at the time each maintenance fee is paid; (5) 1,000 patent owners will need to update attributable owner information each year due to the requirement to identify the attributable owner (or verify that the real party in interest information currently on record at the Office is correct) in an *ex parte* reexamination proceeding, or the requirement to identify the attributable owner when there is a change in ownership during an *ex parte* reexamination proceeding; (6) 100 patent owners will need to update attributable owner information each year due to the requirement to identify the attributable owner (or verify that the attributable owner information currently on record at the Office is correct) at the time the patent owner files a request for supplemental examination; and (7) 2,000 patent owners will need to update attributable owner information each year due to the requirement to identify the attributable owner (or verify that the attributable owner information currently on record at the Office is correct) at the time the patent becomes involved a PTAB post grant review, *inter partes* review, covered business method patent review, derivation proceeding, or the requirement to identify the attributable owner when there is a change in ownership during a PTAB post grant review, *inter partes* review, covered

business method patent review, or derivation proceeding.

4. *Description of the projected reporting, recordkeeping and other compliance requirements of the proposed rules, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record:* The proposed rules will apply to all entities, including any small or micro entity patent applicant or patent holder, that: (1) File a patent application; (2) change attributable owners during the pendency of a patent application; (3) pay an issue fee in an allowed application; (4) pay a maintenance fee for a patent; (5) file a request for supplemental examination under 35 U.S.C. 257(a); (6) file a request for *ex parte* reexamination under 35 U.S.C. 302; or (7) have a patent involved in a third-party requested *ex parte* reexamination under 35 U.S.C. 302, or a trial proceeding before the PTAB, such as any post grant review under 35 U.S.C. 321, *inter partes* review under 35 U.S.C. 311, covered business method patent review under section 18 of the AIA, or derivation proceeding under 35 U.S.C. 135.

A patent attorney or general practice attorney would have the type of professional skills necessary for providing the attributable owner information required by the proposed rules. As discussed previously, the Office issued a request for comments in November of 2011 (*Request for Comments on Eliciting More Complete Patent Assignment Information*, 76 FR at 72372 *et seq.*) and issued a notice of a roundtable and request for comments in November of 2012 (*Notice of Roundtable on Proposed Requirements for Recordation of Real Party-in-Interest Information Throughout Application Pendency and Patent Term*, 77 FR at 70385 *et seq.*). The Office received input at this roundtable, including the suggestion that providing the attributable owner information might have a transaction cost of \$100, depending upon the inclusiveness of the definition of attributable owner (which was discussed under the rubric of "real party in interest" at the roundtable). It was also suggested that the transaction could be less costly, and less frequently incurred, because reporting would occur at times applicants were already working with the application and would require ownership information that was readily known and could be easily reported. As described further below, given the Office's records concerning assignment recordation and feedback at the roundtable, the Office estimates that

in many instances, reporting ownership information in compliance with this proposed rule will have negligible costs. Applicants or patentees will often be reporting information readily known (e.g., that the patent is owned by the inventor, or that the patent is owned by the employer of the inventor to whom it has been assigned) and in many instances will be providing this information at a time they are otherwise interacting with the Office (e.g., upon application, upon issue, during a post-grant proceeding). This seems likely to have a minimal cost, and to require minimal time to report. Given the Office's records suggesting that many applications do not have more than one recorded assignment, in many instances applicants or patentees will likely be merely confirming the ownership information is unchanged, which should have a negligible cost.

As noted previously, the Office's assignment records indicate that approximately ninety-two percent of patent applications have a recorded assignment at the time of grant, and four percent of patent applications have a second recorded assignment each year reflecting some kind of ownership change. Approximately eight percent of applications have no assignment transaction, and presumably are filed by the original owners. This suggests that for most applications, there would be a single reporting of attributable owner, with no changes needed to be reported at later times. At subsequent instances when reporting was required (e.g., upon issue), the owner would merely be confirming that no change had occurred, which would have negligible cost. The Office presumes that reporting costs for these applications would be negligible, because the applicants would be indicating that they are the attributable owners, providing the same information they are providing elsewhere in the application. In summary, the Office estimates that in many instances, when reporting is required under the proposed rule, applicants or patentees will be providing information that is readily known and available to them, and that can be provided easily and at negligible cost during the application process, at grant, or after grant. The Office estimates that in instances where the owner of a large number of patents reports information in compliance with this proposal, economies of scale would likely work to reduce the cost of reporting (e.g., reporting ownership information at the same time). The Office estimates that only a minority of instances would present multiple transfers that would potentially require

greater costs to meet these reporting requirements. In a majority of instances, the Office estimates that the costs to report would be minimal.

The Office welcomes comments from the public specifically on the issue of estimating costs of compliance with the proposed rule, including comments on possible transaction costs, frequencies of reporting changes in information, and possible economies of scale in reporting.

5. *Description of any significant alternatives to the rules which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rules on small entities:* This analysis considered significant alternatives such as: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. See 5 U.S.C. 603.

With respect to the proposed requirement for updating any changes in attributable owners during the application process, the Office considered requiring updated attributable owner information with each reply to an Office action. The Office has instead proposed requiring updating only if there is a change to the attributable owner during the pendency of an application, with a single confirmation at the time of issuance, to reduce the need for a periodic review of attributable owner information.

With respect to the proposed requirement for updating any changes in attributable owners after the patent is granted, the Office considered requiring updating attributable owner information whenever there was a post patent proceeding (e.g., with requests for a certificate of correction under 35 U.S.C. 254 or 255, or requests to correct inventorship under 35 U.S.C. 256).

With respect to differing compliance or reporting requirements or timetables that take into account the resources available to small entities, the Office considered requiring updating attributable owner information at fewer instances during the pendency of an application (e.g., only on filing and at allowance), but such a proposal would not achieve the objection of having accurate and up-to-date ownership information and providing greater public transparency concerning the ownership of pending patent applications and patents. The proposed

rules minimize the "periodic" reporting requirement by permitting an applicant or patent owner who updates attributable owner information whenever there is a change in the attributable owner to simply confirm that there has been no change to the attributable owner.

With respect to the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities, the proposed rules track existing regulations overseen by the Federal Trade Commission (e.g., the definition of ultimate parent entity in 16 CFR 801.1(a)(3), and the definition of entity in 16 CFR 801.1(a)(2)) rather than creating new definitions, to minimize the need for additional investigation and analysis of ownership structures. The simplicity or complexity of the proposed definition of attributable owner with respect to any particular application or patent is driven by the simplicity or complexity of the ownership arrangement of the particular application or patent, which is ultimately within the control of the applicant or patent owner. Finally, as discussed previously, the proposed rules minimize the reporting requirement by permitting an applicant or patent owner who is facing a requirement to identify attributable owner information to simply confirm that there has been no change to the attributable owner.

With respect to an exemption from coverage of the rule, or any part thereof, for such small entities, such an exemption would defeat the objective of having accurate and up-to-date ownership information and providing greater public transparency concerning the ownership of pending patent applications and patents.

Finally, the proposed rules do not involve design standards.

6. *Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rules:* The Office is the sole agency of the United States Government responsible for administering the provisions of title 35, United States Code, pertaining to examination and granting patents. Therefore, no other Federal, state, or local entity shares jurisdiction over the examination and granting of patents.

Other countries, however, have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty

(such as the Paris Convention for the Protection of Industrial Property, the Patent Law Treaty (PLT), or the Patent Cooperation Treaty (PCT)). Nevertheless, the Office believes that there are no other duplicative or overlapping rules.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across Government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not

required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), the United States Patent and Trademark Office will submit a report containing any final rule resulting from this rulemaking and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office.

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this document do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork

and other information collection burdens imposed on the public. This rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549).

This rulemaking proposes to require that patent applicants identify the attributable owner or owners on filing of an application (or shortly thereafter), within three months of any change in attributable owner during the pendency of the application, and when the issue fee is due for an application that has been allowed. This rulemaking also proposes to require that patent holders identify the attributable owner when a maintenance fee is due, and when a patent becomes involved in certain post-issuance proceedings at the Office, including in supplemental examination, *ex parte* reexamination, or a trial proceeding before the PTAB. This rulemaking further proposes to provide that an applicant or patent owner may correct a good faith failure to notify the Office of a change to the attributable owner, or correct an indication of an incorrect or an incomplete attributable owner, by filing a petition accompanied by a showing of reason for the delay, error, or incompleteness.

The collection of information that would be triggered by these proposed requirements has been submitted to OMB under OMB control number 0651–00xx. The proposed collection, containing the basis for the following summary of the estimated annual reporting burdens, will be available at OMB's Information Collection Review Web site: [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). The title, description and respondent description of this information collection, with an estimate of the annual reporting burdens, follows:

*Title of Collection:* Identification of Attributable Owner.

*OMB Control Number:* 0651–00xx.

*Needs and Uses:* This information collection is necessary in order to provide the Office and the public with up-to-date information concerning the attributable owner of a patent or patent application. The Office will use the information collected to facilitate patent examination and other parts of the Office's internal processes by helping to: (1) Ensure that a "power of attorney" is current in each application or proceeding before the Office; (2) avoid potential conflicts of interest for Office personnel; (3) determine the scope of prior art under the common ownership exception under 35 U.S.C. 102(b)(2)(C) and uncover instances of double

patenting; (4) verify that the party making a request for a post-issuance proceeding is a proper party for the proceeding; and (5) ensure that the information the Office provides to the public concerning published applications and issued patents is accurate and not misleading.

**Method of Collection:** By mail, facsimile, hand delivery, or electronically to the Office.

**Affected Public:** Individuals or households; businesses or other for-profits; and not-for-profit institutions.

**Estimated Number of Responses:** 1,116,300 responses per year.

**Estimated Time per Response:** The Office estimates that it will take the public, on average, approximately 6 minutes (0.1 hour) to identify the attributable owner in an application or patent and approximately 1 hour to correct a good faith failure to notify the Office of a change to the attributable owner (or to correct a good faith but incorrect or incomplete indication of attributable owner).

**Estimated Total Annual Respondent Burden Hours:** 111,810 hours per year (1,116,100 responses times 0.1 hours plus 200 responses times 1 hour).

**Estimated Total Annual (Hour) Respondent Cost Burden:** \$43,494,090 per year (111,810 hours times the \$389/hour attorney rate suggested by the APLA 2013 Economic Survey).

The Office is soliciting comments to: (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the Office, including whether the information will have practical utility; (2) evaluate the accuracy of the Office's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Please send comments related to this proposed collection of information under the Paperwork Reduction Act on or before March 25, 2014 to Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450, marked to the attention of Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy. Comments should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC

20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

#### List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be amended as follows:

#### PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR Part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

■ 2. Section 1.17 is amended by revising paragraph (g) to read as follows:

#### § 1.17 Patent application and reexamination processing fees.

\* \* \* \* \*

(g) For filing a petition under one of the following sections which refers to this paragraph:

|                                             |          |
|---------------------------------------------|----------|
| By a micro entity (§ 1.29) .....            | \$50.00  |
| By a small entity (§ 1.27(a)) .....         | \$100.00 |
| By other than a small or micro entity ..... | \$200.00 |

§ 1.12—for access to an assignment record.

§ 1.14—for access to an application.

§ 1.46—for filing an application on behalf of an inventor by a person who otherwise shows sufficient proprietary interest in the matter.

§ 1.55(f)—for filing a belated certified copy of a foreign application.

§ 1.59—for expungement of information.

§ 1.103(a)—to suspend action in an application.

§ 1.136(b)—for review of a request for extension of time when the provisions of § 1.136(a) are not available.

§ 1.279—for correction of attributable owner in a pending application.

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.

§ 1.387—for correction of attributable owner in a patent.

§ 1.550(c)—for patent owner requests for extension of time in *ex parte* reexamination proceedings.

§ 1.956—for patent owner requests for extension of time in *inter partes* reexamination proceedings.

§ 5.12—for expedited handling of a foreign filing license.

§ 5.15—for changing the scope of a license.

§ 5.25—for retroactive license.

\* \* \* \* \*

■ 3. New undesignated center headings and new §§ 1.271, 1.273, 1.275, 1.277, and 1.279 are added immediately after § 1.251 to read as follows:

#### Attributable Owner

##### § 1.271 Attributable owner (Real-parties-in-interest for reporting purposes).

(a) The attributable owner of a patent or application includes each of the following entities:

(1) An entity that, exclusively or jointly, has been assigned title to the patent or application; and

(2) An entity necessary to be joined in a lawsuit in order to have standing to enforce the patent or any patent resulting from the application.

(b) The attributable owner of a patent or application includes the ultimate parent entity as defined in 16 CFR 801.1(a)(3) of an entity described in paragraph (a) of this section.

(c) Any entity that, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of temporarily divesting such entity of attributable ownership of a patent or application, or preventing the vesting of such attributable ownership of a patent or application, shall also be deemed for the purpose of this section to be an attributable owner of such patent or application.

(d) The term “entity” used in this section includes:

(1) Any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, or institution, whether incorporated or not, wherever located and of whatever citizenship;

(2) Any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the entities described in paragraph (d)(1) of this section, in his or her capacity as such;

(3) Any joint venture or other corporation which has not been formed but the acquisition of the voting securities or other interest in which, if already formed, would be an attributable owner as described in this section; or

(4) Any other organization or corporate form not specifically listed in

paragraphs (d)(1), (d)(2), or (d)(3) of this section that holds an interest in an application or patent.

(e) Notwithstanding the provisions of paragraph (d) of this section, the term "entity" does not include any foreign state, foreign government, or agency thereof (other than a corporation or unincorporated entity engaged in commerce), and also does not include the United States, any of the States thereof, or any political subdivision or agency of either (other than a corporation or unincorporated entity engaged in commerce).

(f) When there is a requirement to identify the attributable owner, each entity constituting the attributable owner must be identified as follows:

(1) The identification of a public company must include the name of the company, stock symbol, and stock exchange where the company is listed;

(2) The identification of a non-public company must include the name of the company, place of incorporation, and address of the principal place of business;

(3) The identification of a partnership must include the name of the partnership and address of the principal place of business;

(4) The identification of a natural person must include the full legal name, residence, and a correspondence address; and

(5) The identification of any other type of entity must include its name, if organized under the laws of a state, the name of that state and legal form of organization, and address of the principal place of business.

(g) Except for shareholders of a public company, the presence of a corporate form, partnership, or other association, does not preclude an entity who may also be a shareholder or partner in such an identified attributable owner from a requirement to be separately identified as an attributable owner if the entity is also described in paragraph (a), (b) or (c) of this section as an entity qualifying as an attributable owner.

### **Identification of Attributable Owner in Pending Applications**

#### **§ 1.273 Initial identification of attributable owner in an application.**

The attributable owner as defined in § 1.271 must be identified in each application under 35 U.S.C. 111(a), including a reissue application, and in each international application that commenced the national stage under 35 U.S.C. 371(b) or (f). If an application under 35 U.S.C. 111(a) which has been accorded a filing date pursuant to §§ 1.53(b) or (d) does not identify the

attributable owner as defined in § 1.271, or if an international application which complies with § 1.495(b) does not identify the attributable owner as defined in § 1.271, the applicant will be notified and given a period of time within which to file a notice identifying the attributable owner as defined in § 1.271 to avoid abandonment. The notice by the Office under this section may be combined with a notice under § 1.53(f) or § 1.495(c).

#### **§ 1.275 Maintaining current attributable owner during prosecution of an application.**

If there is a change to the attributable owner as defined in § 1.271 during the pendency of an application under 35 U.S.C. 111(a) or the pendency of an international application which complies with § 1.495(b), the applicant has three months from the date of the change to the attributable owner within which to file a notice identifying the current attributable owner as defined in § 1.271. This three-month period is not extendable.

#### **§ 1.277 Identifying current attributable owner at allowance.**

If a notice of allowance under § 1.311 has been sent to the applicant, the applicant must file a notice identifying the current attributable owner as defined in § 1.271 within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. This three-month period is not extendable. If there has been no change to the attributable owner as defined in § 1.271 that was most recently provided to the Office, the notice may simply indicate that there has been no change to the attributable owner as defined in § 1.271 most recently provided to the Office.

#### **§ 1.279 Correction of failure to notify the Office of a change to the attributable owner and errors in notice of attributable owner in a pending application.**

If, despite a good faith effort by the applicant to notify the Office of the initial attributable owner as defined in § 1.271, and of any changes to the attributable owner as defined in § 1.271, in the manner required by §§ 1.273, 1.275, and 1.277, the applicant has failed to notify the Office of a change to the attributable owner or has indicated an incorrect or an incomplete attributable owner, the failure or error may be excused in a pending application on petition accompanied by a showing of reason for the delay, error, or incompleteness, and the petition fee set forth in § 1.17(g).

■ 4. A new undesignated center heading and new §§ 1.381, 1.383, 1.385, and

1.387 are added immediately after § 1.378 to read as follows:

### **Identification of Attributable Owner in Patents Involved in Proceedings Before the Office**

#### **§ 1.381 Identifying current attributable owner with maintenance fee payment.**

A notice identifying the current attributable owner as defined in § 1.271 must be filed within the period specified in § 1.362(d) or (e), but prior to the date the maintenance fee is paid, for each maintenance fee payment. If there has been no change to the attributable owner as defined in § 1.271 most recently provided to the Office, the notice may simply indicate that there has been no change to the attributable owner as defined in § 1.271 that was most recently provided to the Office.

#### **§ 1.383 Identifying attributable owner in patents involved in Patent Trial and Appeal Board Trial Proceedings.**

The mandatory notice filed by a patent owner as required by § 42.8(a)(2) of this chapter must also be accompanied by a notice identifying the current attributable owner as defined in § 1.271. If there is a change to the attributable owner as defined in § 1.271 during the pendency of the trial proceeding, the patent owner has twenty-one days from the date of the change to the attributable owner within which to file a notice identifying the current attributable owner as defined in § 1.271. This twenty-one-day period is not extendable.

#### **§ 1.385 Identifying attributable owner in patents involved in supplemental examination and reexamination proceedings.**

(a) A request for supplemental examination under § 1.610 must also be accompanied by a notice identifying the current attributable owner as defined in § 1.271.

(b) A request for *ex parte* reexamination under § 1.510 by the patent owner must also be accompanied by a notice identifying the current attributable owner as defined in § 1.271.

(c) A reply or any other paper filed by the patent owner in an *ex parte* reexamination proceeding must be accompanied by a notice identifying the current attributable owner as defined in § 1.271, unless such a notice has previously been filed by the patent owner. If there is a change to the attributable owner as defined in § 1.271 during the pendency of the reexamination proceeding, the patent owner has three months from the date of the change to the attributable owner within which to file a notice identifying

the current attributable owner as defined in § 1.271. This three-month period is not extendable.

**§ 1.387 Correction of failure to notify the Office of a change to the attributable owner and errors in notice of attributable owner in a patent.**

If, despite a good faith effort by the patent owner to notify the Office of the initial attributable owner as defined in § 1.271, and of any changes to the attributable owner as defined in § 1.271, in the manner required by §§ 1.273, 1.275, 1.277, 1.381, 1.383, and 1.385, the patent owner has failed to notify the Office of a change to the attributable owner or has indicated an incorrect or an incomplete attributable owner, the failure or error may be excused on petition accompanied by a showing of reason for the delay, error, or incompleteness, and the petition fee set forth in § 1.17(g).

Dated: January 16, 2014.

**Michelle K. Lee,**

*Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.*

[FR Doc. 2014–01195 Filed 1–23–14; 8:45 am]

**BILLING CODE 3510–16–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA–R03–OAR–2013–0090; FRL–9905–64–Region–3]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Approval of the Redesignation Requests and the Associated Maintenance Plans of the Charleston Nonattainment Area To Attainment for the 1997 Annual and 2006 24-Hour Fine Particulate Matter Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the State of West Virginia's requests to redesignate to attainment the Charleston nonattainment area for the 1997 annual and the 2006 24-hour fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standard (NAAQS). EPA is also proposing to determine that the Charleston Area continues to attain both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. In addition, EPA is proposing to approve as a revision to the West Virginia state implementation plan

(SIP), the associated maintenance plans to show maintenance of the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS through 2025 for the Charleston Area. As part of the maintenance plan, EPA is proposing to approve a 2008 emissions inventory for the Charleston Area for the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA is proposing that the 2008 emissions inventory for volatile organic compounds (VOCs) and ammonia (NH<sub>3</sub>), in conjunction with inventories for nitrogen oxides (NO<sub>x</sub>), direct PM<sub>2.5</sub>, and sulfur dioxide (SO<sub>2</sub>) meet the comprehensive emissions inventory requirement of the Clean Air Act (CAA) for the 2006 24-hour PM<sub>2.5</sub> NAAQS. West Virginia's maintenance plans include insignificance findings for the mobile source contribution of PM<sub>2.5</sub> and NO<sub>x</sub> emissions for the Charleston Area for both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA agrees with these insignificance findings, and is proposing approval of such findings for transportation conformity purposes. In this rulemaking action, EPA also addresses the effects of two decisions of the United States Court of Appeals for the District of Columbia (DC Circuit Court): The DC Circuit Court's August 21, 2012 decision to vacate and remand the Cross-State Air Pollution Control (CSAPR); and the DC Circuit Court's January 4, 2013 decision to remand to EPA two rules implementing the 1997 annual PM<sub>2.5</sub> NAAQS. This rulemaking action to propose approval of the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS redesignation requests and associated maintenance plans for the Charleston Area is based on EPA's determination that the Area has met the criteria for redesignation to attainment specified in the CAA for both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS.

**DATES:** Written comments must be received on or before February 24, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0090 by one of the following methods:

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

B. Email: [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. Mail: EPA–R03–OAR–2013–0090, Cristina Fernandez, Associate Director, Office of Air Quality Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and

special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA–R03–OAR–2013–0090. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 24304.



**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by email at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

The first air quality standards for PM<sub>2.5</sub> were established on July 18, 1997 (62 FR 38652). EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m<sup>3</sup>), based on a three-year average of annual mean PM<sub>2.5</sub> concentrations (the 1997 annual PM<sub>2.5</sub> standard). In the same rulemaking, EPA promulgated a 24-hour standard of 65 µg/m<sup>3</sup> based on a three-year average of the 98th percentile of 24-hour concentrations.

On January 5, 2005 (70 FR 944, 1014), EPA published air quality area designations for the 1997 PM<sub>2.5</sub> NAAQS. In that rulemaking action, EPA designated the Charleston Area as nonattainment for the 1997 annual PM<sub>2.5</sub> NAAQS. The Charleston Area is comprised of Kanawha and Putnam Counties. See 40 CFR 81.349.

On October 17, 2006 (71 FR 61144), EPA retained the annual average standard at 15 µg/m<sup>3</sup> but revised the 24-hour standard to 35 µg/m<sup>3</sup>, based again on the three-year average of the 98th percentile of the 24-hour concentrations (the 2006 annual PM<sub>2.5</sub> standard). On November 13, 2009 (74 FR 58688), EPA published designations for the 2006 24-hour PM<sub>2.5</sub> standard, which became effective on December 14, 2009. In that rulemaking action, EPA designated the Charleston Area as nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. See 74 FR 58775 and 40 CFR 81.349.

In response to legal challenges of the annual standard promulgated in 2006, the DC Circuit Court remanded the 2006 annual standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork*

*Producers Council, et. al. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 annual and the 2006 annual PM<sub>2.5</sub> standards are essentially identical, attainment of the 1997 annual PM<sub>2.5</sub> standard would also indicate attainment of the remanded 2006 annual PM<sub>2.5</sub> standard. Since the Charleston Area is designated nonattainment for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS, today's proposed rulemaking action addresses the redesignation to attainment of the Charleston Area for these standards.

On October 11, 2011 (76 FR 62640) and November 18, 2011 (76 FR 71450), EPA determined that the Charleston Area has attained the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS, respectively. Pursuant to 40 CFR 51.1004(c) and based on these determinations, the requirements for the Charleston Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning SIP revisions related to the attainment of either the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS are suspended until such time as: the Area is redesignated to attainment for each standard, at which time the requirements no longer apply; or EPA determines that the Area has again violated any of the standards, at which time such plans are required to be submitted.

On December 12, 2012 (77 FR 73923), EPA approved a 2002 emissions inventory for the 1997 annual PM<sub>2.5</sub> NAAQS for the Charleston Area. The emissions inventory was submitted with West Virginia's attainment plan for the 1997 annual PM<sub>2.5</sub> NAAQS on November 4, 2009, to meet the requirements of section 172(c)(3) of the CAA, one of the criteria for redesignation. The emissions inventory included emissions for 2002 that cover the general source categories of point, area, nonroad mobile, onroad mobile and biogenic sources which addressed not only direct emissions of PM<sub>2.5</sub>, but also emissions of all precursors with the potential to participate in PM<sub>2.5</sub> formation, i.e., SO<sub>2</sub>, NO<sub>x</sub>, VOC, and NH<sub>3</sub>.

On December 6, 2012, the State of West Virginia through the West Virginia Department of Environmental Protection (WVDEP) formally submitted a request to redesignate the Charleston Area from nonattainment to attainment for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. Concurrently, WVDEP submitted maintenance plans for the Area as SIP revisions to ensure continued attainment throughout the

Area over the next 10 years for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. The maintenance plans submitted for each of the standards are essentially the same, thus EPA is proposing to approve as a SIP revision a maintenance plan for both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. The December 6, 2012 submittal also includes a 2008 emissions inventory for PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> for the 2006 24-hour PM<sub>2.5</sub> NAAQS, which WVDEP supplemented on June 24, 2013 to include emissions of VOC and NH<sub>3</sub>. EPA is proposing to approve the 2008 emissions inventory for the 2006 24-hour PM<sub>2.5</sub> NAAQS for PM<sub>2.5</sub>, SO<sub>2</sub>, NO<sub>x</sub>, VOC, and NH<sub>3</sub> in order to meet the emissions inventory requirement of section 172(c)(3) of the CAA.

In this proposed rulemaking action, EPA is taking into account two decisions of the DC Circuit Court. In the first of the two DC Circuit Court decisions, the DC Circuit Court, on August 21, 2012, issued *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), which vacated and remanded CSAPR and ordered EPA to continue administering the Clean Air Interstate Rule (CAIR) "pending . . . development of a valid replacement." *EME Homer City* at 38. The DC Circuit Court denied all petitions for rehearing on January 24, 2013. EPA and other parties filed for certiorari to the Supreme Court, and on June 24, 2013, the Supreme Court granted certiorari on EPA's petition for appeal of *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), *cert. granted*, 570 U.S. — (2013). Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion. In the second decision, on January 4, 2013, in *Natural Resources Defense Council (NRDC) v. EPA*, the DC Circuit Court remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)" final rule (73 FR 28321, May 16, 2008). 706 F.3d 428 (D.C. Cir. 2013).

**II. EPA's Requirements**

*A. Criteria for Redesignation to Attainment*

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) EPA determines that the area has attained the applicable NAAQS; (2) EPA has fully



approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA has provided guidance on redesignation in the “State Implementation Plans; General Preamble for the Implementation of Title I of the CAA Amendments of 1990,” (57 FR 13498, April 16, 1992) (the “General Preamble”) and has provided further guidance on processing redesignation requests in the following documents: (1) “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the “1992 Calcagni Memorandum”); (2) “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and (3) “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

#### B. Requirements of a Maintenance Plan

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A of the CAA, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future PM<sub>2.5</sub> violations.

The 1992 Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a PM<sub>2.5</sub> maintenance plan should address the following provisions: (1) An attainment emissions inventory; (2) a maintenance demonstration showing maintenance for 10 years; (3) a commitment to maintain the existing monitoring network; (4) verification of continued attainment; and (5) a contingency plan to prevent or correct future violations of the NAAQS.

#### III. Summary of Proposed Actions

EPA is proposing to take several rulemaking actions related to the redesignation of the Charleston Area to attainment for both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA is proposing to find that the Charleston Area meets the requirements for redesignation for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve West Virginia’s request to change the legal designation for the Charleston Area from nonattainment to attainment for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS.

EPA is also proposing to approve the associated maintenance plans for the Charleston Area as a revision to the West Virginia SIP for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS, including the insignificance determinations for PM<sub>2.5</sub> and NO<sub>x</sub> for the onroad motor source contribution of the Charleston Area for both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. The approval of the maintenance plans is one of the CAA criteria for redesignation of the Charleston Area to attainment for both standards. West Virginia’s maintenance plans are designed to ensure continued attainment in the Charleston Area for 10 years after redesignation for both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS.

EPA previously determined that the Charleston Area has attained both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS, therefore, EPA is proposing to find that the Area continues to attain both standards. See 76 FR 62640, October 11, 2011 and 76 FR 71450, November 18, 2011. EPA is also proposing to approve the 2008 comprehensive emissions inventory that includes PM<sub>2.5</sub>, SO<sub>2</sub>, NO<sub>x</sub>, VOC, and NH<sub>3</sub> for the Charleston Area as part of the West Virginia SIP for the 2006 24-hour PM<sub>2.5</sub> NAAQS in order to meet the requirements of section 172(c)(3) of the CAA.

#### IV. Effects of Recent Court Decisions on Proposed Actions

##### A. Effect of the August 21, 2012 DC Circuit Court Decision Regarding EPA’s CSAPR

###### 1. Background

EPA recently promulgated CSAPR (76 FR 48208, August 8, 2011), to replace CAIR, which has been in place since 2005. See 76 FR 59517. CAIR requires significant reductions in emissions of SO<sub>2</sub> and NO<sub>x</sub> from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. See 76 FR 70093. The DC Circuit Court initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

On December 30, 2011, the DC Circuit Court issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the DC Circuit Court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City Generation, L.P. v. EPA* (No. 11–1302 and consolidated cases). The DC Circuit Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the DC Circuit Court issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR “pending the promulgation of a valid replacement.” *EME Homer City*, 696 F.3d at 38 (DC Cir. 2012). The DC Circuit Court denied all petitions for rehearing on January 24, 2013. EPA and other parties have filed petitions for certiorari to the U.S. Supreme Court. On June 24, 2013 the Supreme Court granted EPA’s petition for certiorari. Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion.

###### 2. Proposal on This Issue

In light of these unique circumstances and for the reasons explained subsequently, to the extent that attainment is due to emission reductions associated with CAIR, EPA is here proposing to determine that those reductions are sufficiently permanent and enforceable for purposes of sections 107(d)(3)(E)(iii) and 175A of the CAA. EPA, therefore, proposes to approve the

redesignation requests and the related SIP revisions for Kanawha and Putnam Counties in West Virginia, including West Virginia's plan for maintaining attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS in the Charleston Area.

As directed by the DC Circuit Court, CAIR remains in place and enforceable until substituted by a valid replacement rule. West Virginia's SIP revision lists CAIR as a control measure that was approved by EPA on August 6, 2009 (74 FR 38536) and became state-effective on May 1, 2008 for the purpose of reducing SO<sub>2</sub> and NO<sub>x</sub> emissions. CAIR was thus in place and getting emission reductions when the Charleston Area monitored attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. The quality-assured, quality-controlled, certified monitoring data used to demonstrate the Area's attainment of both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS was also impacted by CAIR.

To the extent that West Virginia is relying on CAIR in its maintenance plan, the recent directive from the DC Circuit Court in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the DC Circuit Court to develop a new rule to address interstate transport to replace CSAPR, and the opinion makes clear that after promulgating that new rule, EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR will remain in place until: (1) EPA has promulgated a final rule through a notice-and-comment rulemaking process; (2) states have had an opportunity to draft and submit SIPs; (3) EPA has reviewed the SIPs to determine if they can be approved; and (4) EPA has taken action on the SIPs, including promulgating a Federal Implementation Plan (FIP) if appropriate. The DC Circuit Court's clear instruction to EPA that it must continue to administer CAIR until a valid replacement exists provides an additional backstop. By definition, any rule that replaces CAIR and meets the DC Circuit Court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the DC Circuit Court emphasized that the consequences of vacating CAIR "might be more severe now in light of the reliance interests accumulated over the intervening four years." *EME Homer City*, 696 F.3d at 38. The accumulated

reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the DC Circuit Court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIP revisions as appropriate to identify whether there are any issues that need to be addressed.

#### *B. Effect of the January 4, 2013 DC Circuit Court Decision Regarding PM<sub>2.5</sub> Implementation Under Subpart 4 of Part D of Title I of the CAA*

##### 1. Background

On January 4, 2013, in *NRDC v. EPA*, the DC Circuit Court remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)" final rule (73 FR 28321, May 16, 2008) (collectively, "1997 PM<sub>2.5</sub> Implementation Rule"). 706 F.3d 428 (D.C. Cir. 2013). The DC Circuit Court found that EPA erred in implementing the 1997 annual PM<sub>2.5</sub> NAAQS pursuant to the general implementation provisions of subpart 1 of Part D of Title I of the CAA (subpart 1), rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I (subpart 4). Although the DC Circuit Court did not directly address the 2006 24-hour PM<sub>2.5</sub> NAAQS, EPA is taking into account the DC Circuit Court's position on subpart 4 and the 1997 annual PM<sub>2.5</sub> NAAQS in evaluating redesignations for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

##### 2. Proposal on This Issue

EPA is proposing to determine that the DC Circuit Court's January 4, 2013 decision does not prevent EPA from redesignating the Charleston Area to attainment for either the 1997 annual or the 2006 24-hour PM<sub>2.5</sub> NAAQS. Even in light of the DC Circuit Court's decision, redesignation for this Area is

appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to the West Virginia redesignation requests and disregards the provisions of its 1997 PM<sub>2.5</sub> Implementation Rule recently remanded by the DC Circuit Court, the State's request for redesignation of the Area still qualifies for approval. EPA's discussion takes into account the effect of the DC Circuit Court's ruling on the Area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

##### a. Applicable Requirements for Purposes of Evaluating the Redesignation Requests

With respect to the 1997 PM<sub>2.5</sub> Implementation Rule, the DC Circuit Court's January 4, 2013 ruling rejected EPA's reasons for implementing the PM<sub>2.5</sub> NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 annual PM<sub>2.5</sub> NAAQS under subpart 4 of Part D of the CAA, in addition to subpart 1. For the purposes of evaluating the West Virginia's redesignation request for the Charleston Area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not "applicable" for the purposes of section 107(d)(3)(E) of the CAA, and thus EPA is not required to consider subpart 4 requirements with respect to the redesignation of the Charleston Area. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are "applicable" and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* 1992 Calcagni Memorandum. *See also* "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after

November 15, 1992,” Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club v. EPA*, 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA’s redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club’s view that the meaning of “applicable” under the statute is “whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment”).<sup>1</sup> In this case, at the time that West Virginia submitted its redesignation requests for both standards, the requirements under subpart 4 were not due, and indeed, were not yet known to apply.

EPA’s view that, for purposes of evaluating the redesignation of the Charleston Area, the subpart 4 requirements were not due at the time West Virginia submitted the redesignation requests is in keeping with the EPA’s interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the DC Circuit Court’s decision in *South Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). In *South Coast*, the DC Circuit Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that “applicable requirements,” for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. See, e.g., Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those rulemaking actions, EPA therefore did not consider subpart 2 requirements to be “applicable” for the purposes of evaluating whether the area should be

redesignated under section 107(d)(3)(E) of the CAA.

EPA’s interpretation derives from the provisions of section 107(d)(3) of the CAA. Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet “all requirements ‘applicable’ to the area under section 110 and part D.” Section 107(d)(3)(E)(ii) provides that EPA must have fully approved the “applicable” SIP for the area seeking redesignation. These two sections read together support EPA’s interpretation of “applicable” as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If “applicable requirements” were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the CAA for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional

requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the D.C. Circuit Court’s January 4, 2013 decision in *NRDC v. EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. West Virginia submitted its redesignation requests for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS on December 6, 2012 for Charleston Area, but the D.C. Circuit Court did not issue its decision remanding EPA’s 1997 PM<sub>2.5</sub> Implementation Rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require West Virginia’s fully-completed and pending redesignation requests for both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS to comply now with requirements of subpart 4 that the D.C. Circuit Court announced only in its January, 2013 decision on the 1997 PM<sub>2.5</sub> Implementation Rule, would be to give retroactive effect to such requirements when the State had no notice that it was required to meet them. The D.C. Circuit Court recognized the inequity of this type of retroactive impact in *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002),<sup>2</sup> where it upheld the D.C. Circuit Court’s ruling refusing to make retroactive EPA’s determination that the Area did not meet its attainment deadline. In that case, petitioners urged the D.C. Circuit Court to make EPA’s nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The D.C. Circuit Court rejected this view, stating that applying it “would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time.” *Id.* at 68. Similarly, it would be unreasonable to penalize the State of West Virginia by rejecting its redesignation request for an area that is already attaining both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards and that met all applicable requirements known to be in effect at the time of the requests. For EPA now to reject the redesignation requests solely because the State did not expressly address

<sup>1</sup> Applicable requirements of the CAA that come due subsequent to the area’s submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

<sup>2</sup> *Sierra Club v. Whitman* was discussed and distinguished in a recent D.C. Circuit Court decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass’n v. EPA*, 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

subpart 4 requirements of which it had no notice, would inflict the same unfairness condemned by the D.C. Circuit Court in *Sierra Club v. Whitman*.

#### b. Subpart 4 Requirements and West Virginia Redesignation Requests

Even if EPA were to take the view that the D.C. Circuit Court's January 4, 2013 decision requires that, in the context of pending redesignations for either the 1997 annual or 2006 24-hour PM<sub>2.5</sub> standards, subpart 4 requirements were due and in effect at the time West Virginia submitted its redesignation requests, EPA proposes to determine that the Charleston Area still qualifies for redesignation to attainment for both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards. As explained subsequently, EPA believes that the two redesignation requests for the Charleston Area, though not expressed in terms of subpart 4 requirements, substantively meet the requirements of that subpart for purposes of redesignating the Area to attainment for both standards.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Charleston Area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* Section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for coarse particulate matter (PM<sub>10</sub>)<sup>3</sup> nonattainment areas, and under the D.C. Circuit Court's January 4, 2013 decision in *NRDC v. EPA*, these same statutory requirements also apply for PM<sub>2.5</sub> nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See*, the General Preamble. In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent "subsumed by, or integrally related to, the more specific PM<sub>10</sub> requirements" (57 FR 13538, April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

For the purposes of these redesignation requests, in order to identify any additional requirements which would apply under subpart 4, we

are considering the Charleston Area to be a "moderate" PM<sub>2.5</sub> nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as "moderate" nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a "serious" nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM<sub>10</sub>, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.<sup>4</sup> In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under

subpart 4,<sup>5</sup> when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the PM<sub>2.5</sub> NAAQS is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that: "The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point."

The General Preamble also explained that: "[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas." *Id.* EPA similarly stated in its 1992 Calcagni Memorandum that, "The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard."

It is evident that even if we were to consider the D.C. Circuit Court's January 4, 2013 decision in *NRDC v. EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively<sup>6</sup> and thus are now past due, those requirements do not apply to an area that is attaining the 1997 annual and/or the 2006 24-hour PM<sub>2.5</sub> NAAQS, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret "applicable requirements" in the redesignation context. *See Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004).

<sup>5</sup> I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

<sup>6</sup> As EPA has explained above, we do not believe that the D.C. Circuit Court's January 4, 2013 decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club v. Whitman*, *supra*.

<sup>3</sup> PM<sub>10</sub> refers to particulates nominally 10 micrometers in diameter or smaller.

<sup>4</sup> The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed in this rulemaking action.

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the 1997 annual and/or the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA's prior "Clean Data Policy" rulemakings for the PM<sub>10</sub> NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* "Determination of Attainment for Coso Junction Nonattainment Area," (75 FR 27944, May 19, 2010). *See also* Coso Junction Proposed PM<sub>10</sub> Redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47, October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

Elsewhere in this notice, EPA determined that the Charleston Area has attained both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. Under its longstanding interpretation, EPA is proposing to determine here that the Area meets the attainment-related plan requirements of subparts 1 and 4 for both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)(1) and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating these redesignation requests.

#### c. Subpart 4 and Control of PM<sub>2.5</sub> Precursors

The D.C. Circuit Court in *NRDC v. EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the D.C. Circuit Court's opinion with respect to PM<sub>2.5</sub> precursors. While past implementation of subpart 4 for PM<sub>10</sub> has allowed for control of PM<sub>10</sub> precursors such as NO<sub>x</sub> from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, section 189(e) of the CAA specifically provides

that control requirements for major stationary sources of direct PM<sub>10</sub> shall also apply to PM<sub>10</sub> precursors from those sources, except where EPA determines that major stationary sources of such precursors "do not contribute significantly to PM<sub>10</sub> levels which exceed the standard in the area."

EPA's 1997 PM<sub>2.5</sub> Implementation Rule, remanded by the D.C. Circuit Court, contained rebuttable presumptions concerning certain PM<sub>2.5</sub> precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was "not required to address VOC [and NH<sub>3</sub>] as . . . PM<sub>2.5</sub> attainment plan precursor[s] and to evaluate sources of VOC [and NH<sub>3</sub>] emissions in the State for control measures." EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing PM<sub>2.5</sub> concentrations. EPA also left open the possibility for such regulation of VOC and NH<sub>3</sub> in specific areas where that was necessary.

The D.C. Circuit Court in its January 4, 2013 decision made reference to both section 189(e) and 40 CFR 51.1002, and stated that, "In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that VOCs and NH<sub>3</sub> are not PM<sub>2.5</sub> precursors, as subpart 4 expressly governs precursor presumptions." *NRDC v. EPA*, at 27, n.10.

Elsewhere in the D.C. Circuit Court's opinion, however, the D.C. Circuit Court observed: "NH<sub>3</sub> is a precursor to fine particulate matter, making it a precursor to both PM<sub>2.5</sub> and PM<sub>10</sub>. For a PM<sub>10</sub> nonattainment area governed by subpart 4, a precursor is presumptively regulated. *See* 42 U.S.C. 7513a(e) [section 189(e)]." *Id.* at 21, n.7.

For a number of reasons, EPA believes that its proposed redesignations of the Charleston Area for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS are consistent with the D.C. Circuit Court's decision on this aspect of subpart 4. First, while the D.C. Circuit Court, citing section 189(e), stated that "for a PM<sub>10</sub> area governed by subpart 4, a precursor is 'presumptively' regulated," the D.C. Circuit Court expressly declined to decide the specific challenge to EPA's 1997 PM<sub>2.5</sub> Implementation Rule provisions regarding NH<sub>3</sub> and VOC as precursors. The D.C. Circuit Court had no occasion to reach whether and how

it was substantively necessary to regulate any specific precursor in a particular PM<sub>2.5</sub> nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request. However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the 1997 PM<sub>2.5</sub> Implementation Rule's rebuttable presumptions regarding NH<sub>3</sub> and VOC as PM<sub>2.5</sub> precursors (and any similar provisions reflected in the guidance for the 2006 24-hour PM<sub>2.5</sub> NAAQS), the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the Area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of Charleston Area, EPA believes that doing so is consistent with proposing redesignation of the Area for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. The Area has attained both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS without any specific additional controls of NH<sub>3</sub> and VOC and emissions from any sources in the Area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM<sub>10</sub> precursors.<sup>7</sup> Under subpart 1 and EPA's prior implementation rule, all major stationary sources of PM<sub>2.5</sub> precursors were subject to regulation, with the exception of NH<sub>3</sub> and VOC. Thus we must address here whether additional controls of NH<sub>3</sub> and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the Area for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. As explained subsequently, we do not believe that any additional controls of NH<sub>3</sub> and VOC are required in the context of these redesignations.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOC under other CAA requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). *See* 57 FR 13542. EPA in

<sup>7</sup> Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

this proposal proposes to determine that West Virginia's SIP has met the provisions of section 189(e) with respect to NH<sub>3</sub> and VOC as precursors. This proposed supplemental determination is based on our findings that: (1) The Charleston Area contains no major stationary sources of NH<sub>3</sub> and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.<sup>8</sup> In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignations of the Charleston Area, which is attaining the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS, at present NH<sub>3</sub> and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 annual or the 2006 24-hour PM<sub>2.5</sub> NAAQS in the Area. See 57 FR 13539–42.

EPA notes that its 1997 PM<sub>2.5</sub> Implementation Rule provisions in 40 CFR 51.1002 were not directed at evaluation of PM<sub>2.5</sub> precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 annual or the 2006 24-hour PM<sub>2.5</sub> NAAQS. By contrast, redesignation to attainment primarily requires the nonattainment area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the D.C. Circuit Court's January 4, 2013 decision as calling for "presumptive regulation" of NH<sub>3</sub> and VOC for PM<sub>2.5</sub> under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring West Virginia to address precursors differently than it has already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM<sub>10</sub> contemplates that states may develop attainment plans that regulate only those precursors that are necessary for

purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.<sup>9</sup> Courts have upheld this approach to the requirements of subpart 4 for PM<sub>10</sub>.<sup>10</sup> EPA believes that application of this approach to PM<sub>2.5</sub> precursors under subpart 4 is reasonable. Because the Charleston Area has already attained both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS with its current approach to regulation of PM<sub>2.5</sub> precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the D.C. Circuit Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of West Virginia's requests for redesignation of the Charleston Area for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. In the context of a redesignation, the Area has shown that it has attained the standards. Moreover, the State has shown and EPA has proposed to determine that attainment of both 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS in this Area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment of the standards. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013 decision of the D.C. Circuit Court as precluding redesignation of the Charleston Area to attainment for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS at this time. In summary, even if West Virginia was required to address precursors for the Charleston Area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded 1997 PM<sub>2.5</sub> Implementation Rule, EPA would still conclude that the Area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) and (v) of the CAA.

<sup>9</sup> See, e.g., "Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM<sub>10</sub> Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM<sub>10</sub> Standards," 69 FR 30006 (May 26, 2004) (approving a PM<sub>10</sub> attainment plan that impose controls on direct PM<sub>10</sub> and NO<sub>x</sub> emissions and did not impose controls on SO<sub>2</sub>, VOC, or NH<sub>3</sub> emissions).

<sup>10</sup> See, e.g., *Assoc. of Irrigated Residents v. EPA et al.*, 423 F.3d 989 (9th Cir. 2005).

## V. EPA's Analysis of West Virginia's Submittal

EPA is proposing several rulemaking actions for Charleston Area: (1) To redesignate Charleston Area to attainment for both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS; and (2) to approve into the West Virginia SIP the associated maintenance plans for both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA is also proposing in this rulemaking action to approve the 2008 comprehensive emissions inventory to satisfy section 172(c)(3) requirement for the 2006 24-hour PM<sub>2.5</sub> NAAQS, one of the criteria for redesignation. EPA's proposed approvals of the redesignation requests and maintenance plans for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS are based upon EPA's determination that the Area continues to attain both standards, which EPA is proposing in this rulemaking action, and that all other redesignation criteria have been met for the Charleston Area. The following is a description of how the WVDEP December 6, 2012 submittal and a supplemental submittal on June 24, 2013 satisfies the requirements of section 107(d)(3)(E) of the CAA for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS.

### A. Requests for Redesignation

#### 1. Attainment

As noted previously, in the final rulemaking action dated October 11, 2011 (76 FR 62640), EPA determined that the Charleston Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS. This determination of attainment was based upon complete, quality-assured and certified ambient air quality monitoring data for the period of 2007–2009 showing that the Area had attained the 1997 annual PM<sub>2.5</sub> NAAQS by its applicable attainment date of April 5, 2010. On November 18, 2011 (76 FR 71450), EPA determined that the Charleston Area had a clean data for the 2006 24-hour PM<sub>2.5</sub> NAAQS. The determination was based upon complete, quality assured, and certified ambient air monitoring data showing that this Area has monitored attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS based on the 2007–2009 data and data available to date for 2010 in EPA's Air Quality System (AQS) database. Further discussion of pertinent air quality issues underlying this determination was provided in the notice of proposed rulemakings for EPA's determination of attainment for this Area, published on July 15, 2011 (76 FR 41739) for the 1997 annual PM<sub>2.5</sub> NAAQS and August 19,

<sup>8</sup> The Charleston Area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology (RACT) regulations and various on-road and non-road motor vehicle control programs.

2011 (76 FR 51927) for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

EPA has reviewed the ambient air quality PM<sub>2.5</sub> monitoring data in the Charleston Area consistent with the requirements contained at 40 CFR part 50, and recorded in EPA's AQS database. To support the previous determinations of attainment of the

Area, EPA has also reviewed more recent data in its AQS database, including certified, quality-assured data for the period from 2008–2010, 2009–2011 and 2010–2012. This data, shown in Table 1, shows that the Charleston Area continues to attain the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. In addition, as discussed subsequently

with respect to the maintenance plan, WVDEP has committed to continue monitoring ambient PM<sub>2.5</sub> concentrations in accordance with 40 CFR part 58. Thus, EPA is proposing to determine that the Charleston Area continues and attain the 1997 and the 2006 24-hour PM<sub>2.5</sub> NAAQS.

TABLE 1—DESIGN VALUES FOR THE CHARLESTON AREA FOR THE 1997 ANNUAL AND THE 2006 24-HOUR PM<sub>2.5</sub> NAAQS (µg/m<sup>3</sup>) FOR 2008–2010, 2009–2011 AND 2010–2012

| Monitor ID<br>(located in Kanawha County) | 3-Year design values                          |                                                |                                               |                                                |                                               |                                                |
|-------------------------------------------|-----------------------------------------------|------------------------------------------------|-----------------------------------------------|------------------------------------------------|-----------------------------------------------|------------------------------------------------|
|                                           | 2008–2010<br>1997 annual<br>PM <sub>2.5</sub> | 2008–2010<br>2006 24-hour<br>PM <sub>2.5</sub> | 2009–2011<br>1997 annual<br>PM <sub>2.5</sub> | 2009–2011<br>2006 24-hour<br>PM <sub>2.5</sub> | 2010–2012<br>1997 annual<br>PM <sub>2.5</sub> | 2010–2012<br>2006 24-hour<br>PM <sub>2.5</sub> |
| 540390010 .....                           | 11.8                                          | 25                                             | 11.0                                          | 24                                             | 10.7                                          | 23                                             |
| 540390005 .....                           | 13.2                                          | 28                                             | 12.5                                          | 26                                             | 11.9                                          | 24                                             |

2. The Area Has Met All Applicable Requirements Under Section 110 and Subpart 1 of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA

In accordance with section 107(d)(3)(E)(v) of the CAA, the SIP revisions for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS for the Charleston Area must be fully approved under section 110(k) of the CAA and all the requirements applicable to the Area under section 110 of the CAA (general SIP requirements) and part D of Title I of the CAA (SIP requirements for nonattainment areas) must be met.

#### a. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) of the CAA include, but are not limited to the following: (1) Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; (2) provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; (3) implementation of a source permit program; provisions for the implementation of Part C requirements PSD; (4) provisions for the implementation of Part D requirements for NSR permit programs; (5) provisions for air pollution modeling; and (6) provisions for public and local agency

participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants in accordance with the NO<sub>x</sub> SIP Call (63 FR 57356, October 27, 1998), amendments to the NO<sub>x</sub> SIP Call (64 FR 26298, May 14, 1999 and 65 FR 11222, March 2, 2000), and CAIR (70 FR 25162, May 12, 2005). However, section 110(a)(2)(D) of the CAA requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110(a)(2) elements of the CAA not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Charleston Area will still be subject to these requirements after it is redesignated. EPA concludes that the section 110(a)(2) of the CAA and part D requirements which are linked with a particular area's designation and classification are the

relevant measures to evaluate in reviewing a redesignation request, and that section 110(a)(2) elements of the CAA not linked in the area's nonattainment status are not applicable for purposes of redesignation. This approach is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000) and in the Pittsburgh, Pennsylvania redesignation (66 FR 53099, October 19, 2001).

EPA has reviewed the West Virginia SIP and has concluded that it meets the general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of West Virginia's SIP addressing section 110(a)(2) requirements, including provisions addressing PM<sub>2.5</sub>. *See* (76 FR 47062, August 4, 2011). These requirements are, however, statewide requirements that are not linked to the PM<sub>2.5</sub> nonattainment status of the Charleston Area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of West Virginia's PM<sub>2.5</sub> redesignation requests.

#### b. Subpart 4 Requirements

Subpart 1 sets forth the basic nonattainment plan requirements applicable to PM<sub>2.5</sub> nonattainment areas. Under section 172 of the CAA, states



with nonattainment areas must submit plans providing for timely attainment and meet a variety of other requirements.

The General Preamble for Implementation of Title I discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining the standard. *See* (57 FR 13498, April 16, 1992).

As noted previously, EPA has determined that the Charleston Area has attained both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. Pursuant to 40 CFR 51.2004(c), the requirement for West Virginia to submit for the Charleston Area an attainment demonstration and associated RACM, an RFP plan, contingency measures, and other planning SIPs related to the attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS are suspended until the Area is redesignated to attainment for each standard, or EPA determines that the Area again violated any of the standards, at which time such plans are required to be submitted. Since the attainment has been reached for the Area for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS and continues to attain both standards, no additional measures are needed to provide for attainment. Therefore, the requirements of sections 172(c)(1), 172(c)(2), 172(c)(6), and 172(c)(9) of the CAA are no longer considered to be

available for purposes of redesignation of the Area for both standards.

Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. As a result of EPA's determinations of attainment of the Area for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS, in which certain planning requirements were suspended for both standards, the only remaining requirement under section 172 of the CAA to be considered for purposes of redesignation of the Area is the comprehensive emissions inventory required under section 172(c)(3) of the CAA. As part of West Virginia's attainment plan submittal, the State submitted a 2002 emissions inventory for the Charleston Area for the 1997 annual PM<sub>2.5</sub> NAAQS on November 4, 2009 which includes emissions estimates that cover the general source categories of point sources, nonroad mobile sources, area sources and on-road mobile sources. The pollutants that comprise the inventory are NO<sub>x</sub>, VOCs, PM<sub>2.5</sub>, NH<sub>3</sub>, and SO<sub>2</sub>. On December 12, 2012 (77 FR 73923), EPA approved the 2002 emissions inventory for the 1997 annual PM<sub>2.5</sub> NAAQS.

The December 6, 2012 submittal included the 2008 comprehensive emissions inventory for the 2006 24-hour PM<sub>2.5</sub> NAAQS. The 2008 emissions inventory includes direct PM, NO<sub>x</sub> and SO<sub>2</sub>. *See* Tables 2 and 3 in this document. On June 24, 2013, West Virginia supplemented its submittal with the 2008 emission inventories for

NH<sub>3</sub> and VOC for the 2006 24-hour PM<sub>2.5</sub> NAAQS. The additional emission inventories information provided by the State addresses emissions of NH<sub>3</sub> and VOC from the general source categories of point sources, area sources, onroad mobile sources, and nonroad sources. *See* Tables 2 and 3 in this document. The state-submitted inventories were based on the data that West Virginia certified and submitted to the 2008 National Emissions Inventory (NEI) that is available at <http://www.epa.gov/ttn/chief/net/2008inventory.html>. The NEI is a comprehensive and detailed estimate of air emissions of both criteria and hazardous air pollutants from all air emissions sources. The NEI is prepared every three years by EPA based primarily upon emission estimates and emission model inputs provided by State, Local and Tribal air agencies.

The NEI point data category contains emission estimates for sources that are individually inventory and located at a fixed, stationary location. Point sources include large industrial facilities and electric power plants. The NEI nonpoint data category contains emissions estimates for sources which individually are too small in magnitude or too numerous to inventory as individual point sources. The NEI onroad and nonroad data categories contain mobile sources which are estimated for the 2008 NEI version 3 via the MOVES2010b and NONROAD models, respectively. NONROAD was run within the National Mobile Inventory Model (NMIM).

TABLE 2—KANAWHA COUNTY, CHARLESTON AREA 2008 EMISSIONS IN TONS PER YEAR (TPY) BY SOURCE SECTOR

| Sector        | Direct PM | NO <sub>x</sub> | SO <sub>2</sub> | NH <sub>3</sub> | VOC   |
|---------------|-----------|-----------------|-----------------|-----------------|-------|
| Point .....   | 792       | 10,222          | 20,018          | 15              | 1,850 |
| Area .....    | 1,658     | 786             | 977             | 86              | 2,786 |
| Nonroad ..... | 262       | 5,679           | 263             | 1               | 1,818 |
| Onroad .....  | 214       | 6,729           | 47              | 278             | 3,385 |
| Total .....   | 2,926     | 23,415          | 21,307          | 380             | 9,839 |

TABLE 3—PUTMAN COUNTY, CHARLESTON AREA 2008 EMISSIONS (TPY) BY SOURCE SECTOR

| Sector        | Direct PM | NO <sub>x</sub> | SO <sub>2</sub> | NH <sub>3</sub> | VOC   |
|---------------|-----------|-----------------|-----------------|-----------------|-------|
| Point .....   | 3,710     | 13,452          | 93,535          | 4               | 311   |
| Area .....    | 608       | 186             | 202             | 48              | 752   |
| Nonroad ..... | 100       | 2,725           | 141             | 0               | 261   |
| Onroad .....  | 54        | 1,609           | 12              | 61              | 710   |
| Total .....   | 4,477     | 17,972          | 93,891          | 113             | 2,034 |

EPA is proposing to approve the 2008 NH<sub>3</sub>, VOC, NO<sub>x</sub>, PM<sub>2.5</sub>, and SO<sub>2</sub> emissions inventory submitted by West Virginia for the 2006 24-hour PM<sub>2.5</sub>

NAAQS. For more information on EPA's analysis of the 2008 emissions inventory, see Appendix B of the State submittal and EPA's emissions

inventory technical support document (TSD) dated August 29, 2013, available in the docket for this rulemaking action at [www.regulations.gov](http://www.regulations.gov). Docket ID No.



EPA-OAR-RO3-2013-0090. Final approval of the 2008 emissions inventory will satisfy the emissions inventory requirement of section 172(c)(3) of the CAA for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

Section 172(c)(4) of the CAA requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) of the CAA requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since the PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994 entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Nevertheless, West Virginia currently has an approved NSR program, codified in 45 CFR 19. *See* (71 FR 64468 November 2, 2006) (approving NSR program into the SIP). *See also* (77 FR 63736, October 17, 2012) (approving revisions to West Virginia's PSD program). However, West Virginia's PSD program for the 1997 annual PM<sub>2.5</sub> NAAQS will become effective in the Charleston Area upon redesignation to attainment.

Section 172(c)(7) of the CAA requires the SIP to meet the applicable provisions of section 110(a)(2) of the CAA. As noted previously, EPA believes the West Virginia SIP meets the requirements of section 110(a)(2) of the CAA that are applicable for purposes of redesignation.

Section 175A of the CAA requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area "for at least 10 years after the redesignation." In conjunction with its request to redesignate the Charleston Area to attainment status, West Virginia submitted SIP revisions to provide for maintenance of the 1997

annual and 2006 24-hour PM<sub>2.5</sub> NAAQS in the Charleston Area for at least 10 years after redesignation, throughout 2025. West Virginia is requesting that EPA approve this SIP revision as meeting the requirement of section 175A of the CAA. Once approved, the maintenance plans for the Charleston Area will ensure that the SIP for West Virginia meets the requirements of the CAA regarding maintenance of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS for the Charleston Area. EPA's analysis of the maintenance plans is provided in section V.B of this document.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability which EPA promulgated pursuant to its authority under the CAA. EPA interprets the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) of the CAA because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See Wall v. EPA*, 265 F.3d 426, (6th Cir. 2001) (upholding this interpretation). *See also* (60 FR 62748, December 7, 1995) (discussing Tampa, Florida).

Thus, for purposes of redesignating to attainment the Charleston Area for the 1997 annual PM<sub>2.5</sub> NAAQS, EPA determines that the Area has met all applicable SIP requirements under part D of Title I of the CAA. EPA also determines that upon final approval of the 2008 comprehensive emissions inventory as proposed in this rulemaking action, the Charleston Area will also meet all applicable SIP requirements under part D of Title I of the CAA for purposes of redesignating

the Area to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

c. The Charleston Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

For purposes of redesignation to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS, EPA has fully approved all applicable requirements of the West Virginia SIP for the Area in accordance with section 110(k) of the CAA. Upon final approval of the 2008 comprehensive emissions inventory proposed in this rulemaking action, EPA will have fully SIP-approved all applicable requirements of the West Virginia SIP for the Area for purposes of redesignation to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS in accordance with section 110(k) of the CAA.

### 3. Permanent and Enforceable Reductions in Emissions

For redesignating a nonattainment area to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions. EPA believes that West Virginia has demonstrated that the observed air quality improvement in the Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. In making this demonstration, West Virginia has calculated the change in emissions between 2005, one of the years used to designate the Area as nonattainment, and 2008, one of the years the Area monitored attainment as provided in Table 4. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Area and contributing areas have implemented in recent years. For more information on EPA's analysis of the 2005 and 2008 emissions inventory, see EPA's emissions inventory TSD dated August 29, 2013, available in the docket for this rulemaking action at [www.regulations.gov](http://www.regulations.gov). Docket ID No. EPA-OAR-RO3-2013-0090.

TABLE 4—COMPARISON OF 2005 BASE YEAR AND 2008 ATTAINMENT YEAR REDUCTIONS IN TPY IN THE CHARLESTON AREA

|                           | 2005   | 2008   | Decrease |
|---------------------------|--------|--------|----------|
| EGU NO <sub>x</sub> ..... | 38,226 | 17,555 | 20,671   |

TABLE 4—COMPARISON OF 2005 BASE YEAR AND 2008 ATTAINMENT YEAR REDUCTIONS IN TPY IN THE CHARLESTON AREA—Continued

|                                 | 2005    | 2008    | Decrease |
|---------------------------------|---------|---------|----------|
| EGU PM <sub>2.5</sub> .....     | 4,802   | 4,359   | 443      |
| EGU SO <sub>2</sub> .....       | 125,276 | 108,959 | 16,317   |
| Onroad NO <sub>x</sub> .....    | 10,776  | 8,337   | 2,439    |
| Onroad PM <sub>2.5</sub> .....  | 351     | 268     | 83       |
| Onroad SO <sub>2</sub> .....    | 214     | 59      | 155      |
| Nonroad NO <sub>x</sub> .....   | 973     | 897     | 76       |
| Nonroad PM <sub>2.5</sub> ..... | 119     | 113     | 6        |
| Nonroad SO <sub>2</sub> .....   | 76      | 14      | 62       |

#### a. Federal Measures Implemented

Reductions in PM<sub>2.5</sub> precursor emissions have occurred statewide and in upwind states as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. The Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards (Tier 2 Standards) have resulted in lower NO<sub>x</sub> and SO<sub>2</sub> emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. EPA has estimated that, after phasing in the new requirements, new vehicles emit less NO<sub>x</sub> in the following percentages: Passenger cars (light duty vehicles)—77 percent; light duty trucks, minivans, and sports utility vehicles—86 percent; and larger sports utility vehicles, vans, and heavier trucks—69–95 percent. EPA expects fleet wide average emissions to decline by similar percentages as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006, which reflects up to a 90 percent reduction in sulfur content.

EPA issued the Heavy-Duty Diesel Engine Rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which reduced PM<sub>2.5</sub> emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The total program is estimated to achieve a 90 percent reduction in direct PM<sub>2.5</sub> emissions and a 95 percent reduction in NO<sub>x</sub> emissions for these new engines using low sulfur diesel, compared to existing engines using higher sulfur diesel fuel. The reduction in fuel sulfur content also yielded an immediate reduction in particulate sulfate emissions from all diesel vehicles.

In May 2004, EPA promulgated the Nonroad Diesel Rule for large nonroad diesel engines, such as those used in construction, agriculture, and mining, to

be phased in between 2008 and 2014.

The rule also reduces the sulfur content in nonroad diesel fuel by over 99 percent. Prior to 2006, nonroad diesel fuel averaged approximately 3,400 ppm sulfur. This rule limited nonroad diesel sulfur content to 500 ppm by 2006, with a further reduction to 15 ppm by 2010.

#### b. State and Local Measures

The Area's air quality is strongly affected by regulation of SO<sub>2</sub> and NO<sub>x</sub> from power plants. EPA promulgated the NO<sub>x</sub> SIP Call, CAIR and CASPR to address SO<sub>2</sub> and NO<sub>x</sub> emissions from EGUs and certain non-EGUs across the eastern United States. The affected EGUs in the Charleston Area are located at the Appalachian Power—Kanawha River Plant in Kanawha County and Appalachian Power—John E. Amos Plant in Putnam County. EPA issued the NO<sub>x</sub> SIP Call in 1998 pursuant to the CAA to require 22 states and the District of Columbia to reduce NO<sub>x</sub> emissions from large EGUs and large non-EGUs such as industrial boilers, internal combustion engines, and cement kilns. See (63 FR 57356, October 27, 1998). EPA approved West Virginia's Phase I NO<sub>x</sub> SIP Call rule on May 10, 2002 (67 FR 31733) and Phase II rule on September 28, 2006 (71 FR 56881). Emission reductions resulting from regulations developed in response to the NO<sub>x</sub> SIP Call are permanent and enforceable.

On March 10, 2005, EPA issued CAIR, which applies to 27 states and the District of Columbia. CAIR relied on 3 separate cap-and-trade programs to reduce SO<sub>2</sub> and NO<sub>x</sub> emissions. On August 4, 2009 (74 FR 38536), EPA approved West Virginia's CAIR rules into the West Virginia SIP. The maintenance plans for the Area for both 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS, thus, list CAIR as a control measure for the purpose of reducing SO<sub>2</sub> and NO<sub>x</sub> emissions from EGUs.

On August 8, 2011 (76 FR 48208), EPA promulgated CSAPR to replace CAIR, which has been in place since 2005. The D.C. Circuit Court initially

vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 21, 2012, the D.C. Circuit Court issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR “pending the promulgation of a valid replacement.” *EME Homer City*, 696 F.3d at 38. EPA and other parties have filed petitions for certiorari to the U.S. Supreme Court, and on June 24, 2013, the Supreme Court granted certiorari on EPA's petition for appeal of *EME Homer City Generation*. See *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), *cert. granted*, 570 U.S.—(2013). Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion.

As noted earlier, EPA believes it is appropriate to allow states to rely on the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable pending a valid replacement rule, for purposes such as a redesignation. CAIR was in place and thus getting emission reductions when the Charleston Area monitored attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. The monitoring data used to demonstrate the Area's attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS was impacted by CAIR. EPA finds West Virginia appropriately included CAIR as a control measure in this SIP revision.

Furthermore, EGUs in this Area are subject to Federal consent decrees that have reduced emissions of NO<sub>x</sub> and SO<sub>2</sub> in the Area. There are two EGUs in the Charleston Area, namely, Appalachian Power, Kanawha River Plant in Kanawha County; and Appalachian Power, John E. Amos Plant in Putnam County. As part of a Federally enforceable consent decree, the Kanawha River Plant was required, on the date of entry, to operate low NO<sub>x</sub> burners continuously to control

emissions of NO<sub>x</sub> and also on the date of entry, units can only burn coal with sulfur content no greater than 1.75 lb/one million British Thermal Unit (mmBTU) on an annual average basis to reduce SO<sub>2</sub> emissions. Since 2008, additional controls have and will be

installed on EGUs within the Area which will continue to contribute to the reductions in precursor pollutants for PM<sub>2.5</sub>. Table 5 provides the reductions from EGUs in the Area from 2005 and 2008. EPA believes that West Virginia has adequately demonstrated that the

improvement in air quality in Charleston Area is due to permanent and enforceable emissions reductions resulting from implementation of the SIP, Federal measures, and other State-adopted measures.

TABLE 5—SUMMARY OF REDUCTIONS FROM EGUS IN THE CHARLESTON AREA, IN TPY

|                         | 2005    | 2008    | Reductions |
|-------------------------|---------|---------|------------|
| SO <sub>2</sub> .....   | 125,276 | 108,959 | 16,317     |
| NO <sub>x</sub> .....   | 38,226  | 17,555  | 20,671     |
| PM <sub>2.5</sub> ..... | 4,802   | 4,359   | 443        |

### B. Maintenance Plans

On December 6, 2012, WVDEP submitted maintenance plans for the Charleston Area for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS as required by section 175A of the CAA. EPA's analysis for proposing approval of the maintenance plans are provided in this section.

#### 1. Attainment Emissions Inventory

An attainment inventory is comprised of the emissions during the time period associated with the monitoring data showing attainment. WVDEP developed emissions inventories for NO<sub>x</sub>, direct PM<sub>2.5</sub>, and SO<sub>2</sub> for 2008, one of the years in the period during which the Charleston Area monitored attainment of the 1997 annual PM<sub>2.5</sub> standard, as described previously. The 2008 point source inventory contained emissions for EGUs and non-EGU sources in Kanawha and Putnam Counties in West Virginia. WVDEP used the 2008 annual emissions inventory submitted to EPA's NEI database and EPA's Clean Air Markets Division (CAMD) database to compile their inventory. For the 2008 area source emissions, WVDEP used the 2008 NEI v1.5 data developed by EPA. For the 2008 nonroad mobile sources, WVDEP generated the emissions using EPA's NONROAD model. The 2008 onroad mobile source inventory was developed using the most current version of EPA's highway mobile source emissions model MOVES2010a. WVDEP used the Kentucky, Ohio, and West Virginia (KYOVA) Travel Demand Model, which is the most recent travel demand model provided by the KYOVA Interstate Planning Commission that covers the nonattainment counties in West Virginia. Information from the travel demand model combined with Highway Performance Monitoring Systems (HPMS) county-level data from each area were used in the emissions analysis. Additional data needed for input into the MOVES2010a model was provided by the Ohio Department of

Transportation (ODOT), Ohio EPA, West Virginia Department of Transportation (WVDOT), WVDEP, Kentucky Transportation Cabinet (KYTC), and the Kentucky Division of Air Quality (KDAQ).

EPA has reviewed the documentation provided by WVDEP and found the emissions inventory to be acceptable. For more information on EPA's analysis of the 2008 emissions inventory, see Appendix B of the State submittal and the emissions inventory TSD dated August 29, 2013, available on line at [www.regulations.gov](http://www.regulations.gov), Docket ID No. EPA-OAR-R03-2013-0090.

#### 2. Maintenance Demonstration

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area "for at least 10 years after the redesignation." EPA has interpreted this as a showing of maintenance "for a period of ten years following redesignation." Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. See 1992 Calcagni Memorandum, pages 9–10.

For a demonstration of maintenance, emissions inventories are required to be projected to future dates to assess the influence of future growth and controls; however, the maintenance demonstration need not be based on modeling. See *Wall v. EPA*, *supra*; *Sierra Club v. EPA*, *supra*. See also 66 FR 53099–53100; 68 FR 25430–32. WVDEP uses projection inventories to show that the Area will remain in attainment and developed projection inventories for an interim year of 2018 and a maintenance plan end year of 2025 to show that future emissions of NO<sub>x</sub>, SO<sub>2</sub>, and direct PM<sub>2.5</sub> will remain at or below the attainment year 2008

emissions levels throughout the Charleston Area through the year 2025.

The projection inventories for the 2018 and 2025 point, area, and nonroad sources were based on the 2012 and 2018 Visibility Improvement State and Tribal Association of the Southeast (VISTAS)/Association of Southeastern Integrated Planning (ASIP) modeling inventory. West Virginia developed the 2018 point source inventory by interpolation between VISTAS/ASIP 2012 and 2018 modeling inventory. The 2025 EGU inventory for PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub> was kept the same as the VISTAS/ASIP 2018 inventory. The 2025 non-EGU inventory was extrapolated from the 2012 and 2018 inventory. Point source emissions for 2012 and 2018 were developed for EGUs and non-EGUs. For EGUs, WVDEP used the projection inventory developed by VISTAS/ASIP. VISTAS/ASIP analysis was based on EPA's Integrated Planning Model (IPM). The VISTAS/ASIP analysis projected future year emissions for EGUs under several scenarios based on the best information available at the time of the analysis. WVDEP used the "on the way" (OTW) projections, which took into account the reductions required by CAIR, as a basis for 2012 and 2018 EGU emissions. VISTAS/ASIP used EPA's Economic Growth Analysis System (EGAS), Version 4.0 to make the projections for non-EGUs, incorporating the growth factors suggested in the reports entitled, "Development of Growth Factors for Future Year Modeling Inventories (April 30, 2004)" and "CAIR Emission Inventory Overview (July 23, 2004)." EPA has reviewed the documentation provided by WVDEP and found the methodologies acceptable.

Area source emissions for 2018 were interpolated from the VISTAS/ASIP 2012 and 2018 inventories. The 2025 emissions were extrapolated from the VISTAS/ASIP 2012 and 2018 inventories. Growth and controls for emissions were based on the

methodologies applied by EPA for the CAIR analysis. Nonroad source emissions, including aircraft, locomotives, and commercial marine vessels (CMV) for 2018 were interpolated from the VISTAS/ASIP 2012 and 2018 inventories. CMV source emissions from SO<sub>2</sub> included in the 2025 inventory were held constant at 2018 levels because no further reduction in fuel sulfur content is expected. All

other nonroad source emissions for 2025 were extrapolated from the VISTAS/ASIP 2012 and 2018 inventories. The 2018 and 2025 onroad mobile source emissions were prepared using MOVES2010a following the same procedure as the 2008 inventory as described previously. EPA has determined that the emissions inventories discussed above as provided by WVDEP are approvable. For more

information on EPA's analysis of the emissions inventory, *see* Appendix B of the State submittal and EPA's TSD dated August 29, 2013, available on line at [www.regulations.gov](http://www.regulations.gov), Docket ID No. EPA-OAR-R03-2013-0090. Table 6 provides the inventories for the 2008 attainment year, the 2018 interim year, and the 2025 maintenance plan end year for the Area.

TABLE 6—COMPARISON OF 2008, 2018, AND 2025 SO<sub>2</sub>, NO<sub>x</sub>, AND DIRECT PM EMISSION TOTALS FOR THE CHARLESTON AREA (IN TPY)

|                                 | SO <sub>2</sub> | NO <sub>x</sub> | PM <sub>2.5</sub> |
|---------------------------------|-----------------|-----------------|-------------------|
| 2008 (attainment) .....         | 115,198         | 41,387          | 7,403             |
| 2018 (interim) .....            | 23,535          | 28,331          | 5,929             |
| 2018 (projected decrease) ..... | 91,663          | 13,056          | 1,474             |
| 2025 (maintenance) .....        | 23,694          | 27,291          | 5,869             |
| 2025 (projected decrease) ..... | 91,504          | 14,907          | 1,534             |

Table 6 shows that between 2008 and 2018, the Area is projected to reduce SO<sub>2</sub> emissions by 91,663 tpy, NO<sub>x</sub> emissions by 13,056 tpy, and direct PM emissions by 1,474 tpy. Between 2008 and 2025, the Area is projected to reduce SO<sub>2</sub> emissions by 91,504 tpy, NO<sub>x</sub> emissions by 14,907 tpy, and direct PM<sub>2.5</sub> emissions by 1,534 tpy. Thus, the projected emissions inventories show that the Area will continue to maintain the 1997 annual and 2006 PM<sub>2.5</sub> NAAQS during the 10 year maintenance period.

### 3. Monitoring Network

West Virginia's maintenance plans include a commitment to continue to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. West Virginia currently operates two PM<sub>2.5</sub> monitors in the Charleston Area. These monitors are located in Kanawha County and operated by the West Virginia Division of Air Quality. West Virginia will consult with EPA prior to making any necessary changes to the network and will continue to quality assure the monitoring data in accordance with the requirements of 40 CFR part 58.

### 4. Verification of Continued Attainment

To provide for tracking of the emission levels in the Area, WVDEP requires major point sources to submit air emissions information annually and prepares a new periodic inventory for all PM<sub>2.5</sub> precursors every three years in accordance with EPA's Air Emissions Reporting Requirements (AERR). Emissions information will be compared to the attainment year inventory (2008) to assure continued attainment with the

1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS and will used to assess emissions trends, as necessary.

### 5. Contingency Measures

The contingency plan provisions are designed to promptly correct a violation of either the 1997 annual or the 2006 24-hour PM<sub>2.5</sub> NAAQS that occurs in the Area after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that a state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would "trigger" the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

West Virginia's maintenance plans outline the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur. West Virginia's contingency measures include a warning level response and an action level response. An initial warning level response is triggered for the 1997 annual PM<sub>2.5</sub> NAAQS when the average weighted annual mean for a single calendar year exceeds 15.5 µg/m<sup>3</sup> within the Charleston Area. An initial warning level response is triggered for the 2006 24-hour PM<sub>2.5</sub> NAAQS when the 98th percentile 24-hour PM<sub>2.5</sub> concentration for a single calendar year exceeds 35.5 µg/m<sup>3</sup> within the Area. In the case of triggering a warning level, a study will be conducted to determine if the

emissions trends show increasing concentrations of PM<sub>2.5</sub>, and whether this trend, if any, is likely to continue. If it is determined through the study that action is necessary to reverse emissions increases, West Virginia will follow the same procedures for control selection and implementation as for an action level response, and implementation of necessary controls will take place as expeditiously as possible, but no later than 12 months from the end of the most recent calendar year.

For the 1997 annual PM<sub>2.5</sub> NAAQS, the action level response will be prompted by any one of the following: (1) A warning level response study showing emissions increases; (2) a two-year average of the weighted annual mean of 15.0 µg/m<sup>3</sup> or greater occurs within the Area; or (3) a violation of the standard in the Area (i.e., a three-year average of the weighted annual means of 15.0 µg/m<sup>3</sup> or greater). For the 2006 24-hour PM<sub>2.5</sub> NAAQS, the action level response will be prompted by the following: (1) A warning level response study showing emissions increases; (2) a two-year average of the 98th percentile of 35 µg/m<sup>3</sup> or greater within the area; or (3) a violation of the standard in Area (i.e., a three-year average of the 98th percentile of 35 µg/m<sup>3</sup> or greater). If an action level response is triggered for any of the standards, West Virginia will adopt and implement appropriate control measures within 18 months from the end of the year in which monitored air quality triggering a response occurs. West Virginia will also consider whether additional regulations that are not a part of the maintenance plan can be implemented in a timely manner to respond to the trigger.

West Virginia commits to adopt and expeditiously implement the necessary corrective actions. West Virginia's potential contingency measures include the following: (1) Diesel reduction emission strategies, (2) alternative fuels and diesel retrofit programs for fleet vehicle operations, (3) tighter PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> emissions offsets for new and modified major sources, (4) concrete manufacturing controls, and (5) additional NO<sub>x</sub> reductions. Additionally, West Virginia has identified a list of sources that could potentially be controlled, which include the following: Industrial, commercial and institutional (ICI) boilers for SO<sub>2</sub> and NO<sub>x</sub> controls, EGUs, process heaters, internal combustion engines, combustion turbines, other sources greater than 100 tpy, fleet vehicles, and aggregate processing plants.

#### 6. EPA's Evaluation of VOC and NH<sub>3</sub> Precursors in West Virginia's Maintenance Plans

With regard to the redesignation of the Charleston Area in evaluating the effect of the DC Circuit Court's remand of EPA's 1997 PM<sub>2.5</sub> Implementation Rule, which included presumptions against consideration of VOC and NH<sub>3</sub> as PM<sub>2.5</sub> precursors, EPA in this proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv) of the CAA. To begin with, EPA notes that the Area has attained both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS and that West Virginia has shown that attainment of these standards are due to permanent and enforceable emission reductions.

EPA proposes to determine that the West Virginia's maintenance plan shows continued maintenance of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS by tracking the levels of the precursors whose control brought about attainment of the standards in the Charleston Area. EPA therefore believes that the only additional consideration related to the maintenance plan requirements that results from the DC Circuit Court's January 4, 2013 decision is that of assessing the potential role of VOC and NH<sub>3</sub> in demonstrating continued maintenance in this Area. As explained subsequently, based upon documentation provided by the State and supporting information, EPA believes that the maintenance plan for the Area need not include any additional emission reductions of VOC or NH<sub>3</sub> in order to provide for continued maintenance of the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS.

First, as noted previously in EPA's discussion of section 189(e), VOC emission levels in the Charleston Area have historically been well-controlled under SIP requirements related to ozone and other pollutants. Second, total NH<sub>3</sub> emissions throughout the Charleston Area are low, estimated to be less than 600 tons per year. See Table 7 in this document. This amount of NH<sub>3</sub> emissions appears especially small in comparison to the total amounts of SO<sub>2</sub>, NO<sub>x</sub>, and even direct PM<sub>2.5</sub> emissions from sources in the Area.

West Virginia's maintenance plan shows that significant emissions of direct PM, NO<sub>x</sub>, and SO<sub>2</sub> are projected to decrease by 1,534 tpy, 14,907 tpy, and 91,504 tpy, respectively, over the maintenance period in the Area. See

Table 6 in this document. In addition, emissions inventories used in the regulatory impact analysis (RIA) for the 2012 PM<sub>2.5</sub> NAAQS<sup>11</sup> show that VOC emissions in the Area are projected to decrease by 4,282 tpy between 2007 and 2020. NH<sub>3</sub> emissions are projected to increase by 55 tpy between 2007 and 2020; however this increase is not significant when compared with the emissions reductions projected for the other precursors. See Table 7 in this document. Given that the Charleston Area is already attaining the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS even with the current level of emissions from sources in the Area, the downward trend of emissions inventories would be consistent with continued attainment.

Indeed, projected emissions reductions for the precursors that West Virginia is addressing for purposes of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS indicate that the Area should continue to attain both standards following the precursor control strategy that the State has already elected to pursue.

Even if VOC and NH<sub>3</sub> emissions were to increase unexpectedly between 2007 and 2025, the overall emissions reductions projected between 2008 and 2025 of direct PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub> would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential PM<sub>2.5</sub> precursors will not increase to the extent that they will cause monitored PM<sub>2.5</sub> levels to violate either the 1997 annual or 2006 24-hour PM<sub>2.5</sub> standard during the maintenance period.

TABLE 7—COMPARISON OF 2007 AND 2020 EMISSIONS OF VOC AND NH<sub>3</sub> FOR THE CHARLESTON AREA, IN TPY<sup>12</sup>

| Sector        | VOC    |       |                      | NH <sub>3</sub> |      |                      |
|---------------|--------|-------|----------------------|-----------------|------|----------------------|
|               | 2007   | 2020  | Net change 2007–2020 | 2007            | 2020 | Net Change 2007–2020 |
| Point .....   | 2,182  | 2,185 | 3                    | 20              | 161  | 141                  |
| Area .....    | 2,825  | 2,605 | –220                 | 118             | 120  | 2                    |
| Nonroad ..... | 2,413  | 1,494 | –919                 | 4               | 4    | 0                    |
| On-road ..... | 4,263  | 1,117 | –3,164               | 155             | 69   | –86                  |
| Fires .....   | 2,167  | 2,167 | 0                    | 150             | 150  | 0                    |
| Total .....   | 13,850 | 9,568 | –4,282               | 447             | 504  | 55                   |

In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. The current annual design value for the Area is 12.5 µg/m<sup>3</sup>

and the current 24-hour design value is 26 µg/m<sup>3</sup>, based on 2009–2011 air quality data, which are well below the levels of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. See Table 1 in this

document. Moreover, the modeling analysis conducted for the RIA for the 2012 PM<sub>2.5</sub> NAAQS indicates that the design values for the Charleston Area are expected to continue to decline

<sup>11</sup> "Review of the NAAQS for Particulate Matter—Regulatory Impact Analysis." Docket ID No. EPA–R03–OAR–2010–0955.

<sup>12</sup> These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 PM<sub>2.5</sub> NAAQS.

through 2020. In the RIA analysis, the 2020 modeled annual design value for the Area is 9.4  $\mu\text{g}/\text{m}^3$  and the 2020 24-hour design value is 17  $\mu\text{g}/\text{m}^3$ .<sup>13</sup> Given that most precursor emissions are projected to decrease through 2025, it is reasonable to conclude that monitored  $\text{PM}_{2.5}$  levels in the Area will also continue to decrease through 2025.

Thus, EPA believes that there is ample justification to conclude that the Charleston Area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to  $\text{PM}_{2.5}$ . After consideration of the DC Circuit Court's January 4, 2013 decision, and for the reasons set forth in this notice, EPA proposes to approve West Virginia's maintenance plans and requests to redesignate the Charleston Area to attainment for the 1997 annual and 2006 24-hour  $\text{PM}_{2.5}$  standards. This proposed rulemaking action is based on a showing that the West Virginia's maintenance plans provide for maintenance of both the 1997 annual and 2006 24-hour  $\text{PM}_{2.5}$  standards for at least 10 years after redesignation, throughout 2025, in accordance with section 175A of the CAA.

### C. Transportation Conformity Insignificance Determinations

Transportation conformity is required under section 176(c) of the CAA to ensure that Federally supported highway, transit projects, and other activities are consistent with (conform to) the purpose of the SIP. The CAA requires Federal actions in nonattainment and maintenance areas to "conform to" the goals of the SIP. This means that such actions will not cause or contribute to violations of a NAAQS or any interim milestone. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the Transportation Conformity Rule (40 CFR part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, EPA, FHWA, and FTA to demonstrate that their metropolitan transportation plans and transportation improvement plans (TIPs) conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (MVEBs) contained in a SIP.

For MVEBs to be approvable, they must meet, at a minimum, EPA's adequacy criteria in 40 CFR 93.118(e)(4). However, in certain instances, the Transportation Conformity Rule allows areas to forgo establishment of a MVEB where it is demonstrated that the regional motor vehicle emissions for a particular pollutant or precursor are an insignificant contributor to the air quality problem in an area. The general criteria for insignificance determinations can be found in 40 CFR 93.109(f). Insignificance determinations are based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory; the current state of air quality as determined by monitoring data for the relevant NAAQS; the absence of SIP motor vehicle control measures; and the historical trends and future projections of the growth of motor vehicle emissions. EPA's rationale for providing for insignificance determinations is described in the July 1, 2004, revision to the Transportation Conformity Rule at 69 FR 40004. Specifically, the rationale is explained on page 40061 under the subsection XXIII.B entitled, "Areas With Insignificant Motor Vehicle Emissions."

As part of the 1997 annual and the 2006 24-hour  $\text{PM}_{2.5}$  NAAQS redesignation requests and maintenance plans, West Virginia is requesting that EPA finds that onroad emission of direct PM and  $\text{NO}_x$  emissions for the Charleston Area are insignificant for transportation conformity purposes. On September 12, 2013, EPA initiated an adequacy review of the findings of insignificance for both the 1997 annual and the 2006 24-hour  $\text{PM}_{2.5}$  NAAQS that West Virginia included in its redesignation submittals. As such, notices of the submission of these findings were posted on the adequacy Web site (<http://epa.gov/otaq/stateresources/transconf/cursips.htm>). The public comment period closed on October 15, 2013. There were no public comments. EPA is acting on making these adequacy findings final through a separate notice of adequacy. Consistent with EPA's adequacy review of West Virginia's redesignation requests and maintenance plans and EPA's thorough review of the entire SIP submissions, EPA is proposing to approve West Virginia's insignificance determinations for the onroad motor vehicle contribution of  $\text{PM}_{2.5}$  and  $\text{NO}_x$  emissions to the overall  $\text{PM}_{2.5}$  emissions for the 1997 annual and the 2006 24-hour  $\text{PM}_{2.5}$  NAAQS for the Charleston Area.

Because EPA finds that West Virginia's submittals meet the criteria in the Transportation Conformity Rule for insignificance findings for motor vehicle emissions of  $\text{PM}_{2.5}$  and  $\text{NO}_x$  in the Charleston Area, it is not necessary to establish  $\text{PM}_{2.5}$  and  $\text{NO}_x$  MVEBs for the Area. EPA finds that the submittals demonstrate that  $\text{PM}_{2.5}$  and  $\text{NO}_x$ , regional motor vehicle emissions are insignificant contributors to the annual and daily  $\text{PM}_{2.5}$  air quality in the Charleston Area. These findings are based on the following: (1) West Virginia provided information that projects that onroad mobile source  $\text{NO}_x$  constitutes 8 percent or less of the Area's total  $\text{NO}_x$  emissions in 2018 and 2025 due to continuing fleet turnover; (2) West Virginia provided information that projects that onroad mobile source  $\text{PM}_{2.5}$  emissions constitute 3.62 percent of the Area's total  $\text{PM}_{2.5}$  emissions and decreases significantly in later analysis years to 1.89 percent (2018) and 1.40 percent (2025); (3) there are no SIP requirements for motor vehicle control measures for the Area and it is unlikely that motor vehicle control measures will be implemented for  $\text{PM}_{2.5}$  in the Area in the future; and (4) the Area has attained both the 1997 annual and the 2006 24-hour  $\text{PM}_{2.5}$  NAAQS. As a result, MVEBs for  $\text{PM}_{2.5}$  and  $\text{NO}_x$  are not required for the Charleston Area to maintain the 1997 annual and the 2006 24-hour  $\text{PM}_{2.5}$  NAAQS. EPA is proposing to approve the findings of insignificant contribution by onroad sources for  $\text{PM}_{2.5}$  and  $\text{NO}_x$ , resulting in no proposed MVEBs for the Charleston Area for the 2018 and 2025 projected maintenance years. Onroad emissions were calculated using the EPA required MOVES2010a model.

West Virginia did not provide emission budgets for  $\text{SO}_2$ , VOC, and  $\text{NH}_3$  because it concluded, consistent with the presumptions regarding these precursors in the Transportation Conformity Rule at 40 CFR 93.102(b)(2)(v), which predated and was not disturbed by the litigation on the 1997  $\text{PM}_{2.5}$  Implementation Rule, that emissions of these precursors from motor vehicles are not significant contributors to the Area's  $\text{PM}_{2.5}$  air quality problem.

EPA issued conformity regulations to implement the 1997 annual  $\text{PM}_{2.5}$  NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005). Those actions were not part of the final rule recently remanded to EPA by the DC Circuit Court in *NRDC v. EPA*, No. 08–1250 (Jan. 4, 2013), in which the DC Circuit Court remanded to EPA the 1997  $\text{PM}_{2.5}$  Implementation Rule because it concluded that EPA

<sup>13</sup> The 2020 projected  $\text{PM}_{2.5}$  design values are part of the RIA for the 2012  $\text{PM}_{2.5}$  NAAQS.

must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4, rather than solely under the general provisions of subpart 1. That decision does not affect EPA's proposed approval of the insignificance findings.

First, as noted above, EPA's conformity rule implementing the 1997 annual PM<sub>2.5</sub> NAAQS was a separate action from the overall PM<sub>2.5</sub> implementation rule addressed by the DC Circuit Court and was not considered or disturbed by the decision. Therefore, the conformity regulations were not at issue in *NRDC v. EPA*.<sup>14</sup> In addition, as discussed in section V.A.1 of this rulemaking action, the air quality data show that the Charleston Area continues to attain both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. Further, West Virginia's maintenance plan shows continued maintenance through 2025 by demonstrating that NO<sub>x</sub>, SO<sub>2</sub>, and direct PM emissions continue to decrease through the maintenance period. With regard to SO<sub>2</sub>, the 2005 final conformity rule (70 FR 24280) based its presumption concerning onroad SO<sub>2</sub> MVEBs on emissions inventories that show that SO<sub>2</sub> emissions from onroad sources constitute a "de minimis" portion of total SO<sub>2</sub> emissions. For the Charleston Area, onroad mobile source SO<sub>2</sub> constitutes less than two tenths of one percent (less than 0.2 percent) of the Area's total SO<sub>2</sub> emissions in the 2018 and 2025 horizon years. For more information on EPA's review of the determination of insignificance, see the TSD dated October 29, 2013, available on line at [www.regulations.gov](http://www.regulations.gov), Docket ID No. EPA-OAR-R03-2013-0090.

## VI. Proposed Actions

EPA is proposing to approve the redesignation of the Charleston Area from nonattainment to attainment for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA has evaluated West Virginia's redesignation requests and determined that upon approval of the 2008 comprehensive emissions inventory for the 2006 24-hour PM<sub>2.5</sub> NAAQS proposed in this rulemaking action, it would meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for both standards. EPA

believes that the monitoring data demonstrate that the Charleston Area is attaining and will continue to attain the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA is also proposing to approve the associated maintenance plans for the Area submitted on December 6, 2012, as a revision to the West Virginia SIP because it meets the requirements of section 175A of the CAA for both standards. For transportation conformity purposes, EPA is also proposing to approve both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS, West Virginia's determinations that onroad emissions of PM<sub>2.5</sub> and NO<sub>x</sub> are insignificant contributors to PM<sub>2.5</sub> concentrations in the Charleston Area. Final approval of these redesignation requests would change the official designations of the Charleston Area from nonattainment to attainment for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS at 40 CFR part 81, and would incorporate into the West Virginia SIP the associated maintenance plans ensuring continued attainment of the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS in Charleston Area for the next 10 years, until 2025. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under section 107(d)(3)(E) of the CAA are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this rulemaking action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under

Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule proposing to approve West Virginia's redesignation requests, maintenance plans, and transportation conformity insignificance determinations for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 2008 emissions inventory for the 2006 24-hour PM<sub>2.5</sub> NAAQS for the Charleston Area, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## List of Subjects

### 40 CFR Part 52

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

### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

<sup>14</sup> The 2004 rulemaking action addressed most of the transportation conformity requirements that apply in PM<sub>2.5</sub> nonattainment and maintenance areas. The 2005 conformity rule included provisions addressing treatment of PM<sub>2.5</sub> precursors in MVEBs. See 40 CFR 93.102(b)(2). While none of these provisions were challenged in the *NRDC* case, EPA also notes that the Court declined to address challenges to EPA's presumptions regarding PM<sub>2.5</sub> precursors in the PM<sub>2.5</sub> implementation rule. *NRDC v. EPA*, at 27, n. 10.



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

**Dated:** December 17, 2013.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2014-01181 Filed 1-23-14; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[MB Docket No. 12-3; FCC 13-162]

#### Sports Blackout Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on its proposal to eliminate the sports blackout rules. Elimination of the sports blackout rules alone likely would not end sports blackouts, but it would leave sports carriage issues to private solutions negotiated by the interested parties in light of current market conditions and eliminate unnecessary regulation.

**DATES:** Comments for this proceeding are due on or before February 24, 2014; reply comments are due on or before March 25, 2014.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 12-3, by any of the following methods:

- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Kathy Berthot, [Kathy.Berthot@fcc.gov](mailto:Kathy.Berthot@fcc.gov), of the

Media Bureau, Policy Division, (202) 418-7454.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking*, FCC 13-162, adopted on December 17, 2013 and released on December 18, 2013. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY-A257, Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

This document contains no proposed information collection requirements.

#### Summary of the Notice of Proposed Rulemaking

##### I. Introduction

1. In this *Notice of Proposed Rulemaking*, we propose to eliminate the Commission's sports blackout rules, which prohibit certain multichannel video programming distributors (MVPDs) from retransmitting, within a protected local blackout zone, the signal of a distant broadcast station carrying a live sporting event if the event is not available live on a local television broadcast station.<sup>1</sup> The sports blackout rules were originally adopted nearly 40 years ago when game ticket sales were the main source of revenue for sports leagues. These rules were intended to address concerns that MVPDs' importation of a distant signal carrying a blacked-out sports event could result in lost revenue from ticket sales, which might cause sports leagues to expand the reach of blackouts by refusing to sell their rights to sports events to all distant stations. The rationale underpinning the rules was to ensure to the greatest extent possible the continued availability of sports telecasts to the public. Changes in the sports industry in the last four decades have called into question whether the sports blackout rules remain necessary to ensure the overall availability of sports programming to

the general public. In this proceeding, we will determine whether the sports blackout rules have become outdated due to marketplace changes since their adoption, and whether modification or elimination of those rules is appropriate. We recognize that elimination of our sports blackout rules alone might not end sports blackouts, but it would leave sports carriage issues to private solutions negotiated by the interested parties in light of current market conditions and eliminate unnecessary regulation.

##### II. Background

###### A. History of the Sports Blackout Rules

2. Prior to 1953, National Football League (NFL) bylaws prohibited member teams from, among other things, (i) telecasting their games into the home territory of another team that was playing at home, and (ii) telecasting their games into the home territory of another team that was playing away from home and was telecasting its game into its home territory. In 1953, a federal court held that the NFL's prohibition on the telecast of outside games into the home territory of a team that was playing at home was a reasonable method of protecting the home team's gate receipts and was not illegal under the antitrust laws. The court found, however, that restricting the telecast of outside games into the home territory of a team not playing at home was an unreasonable restraint on trade because, when the home team was playing away, there was no gate to protect.

3. In 1961, the NFL entered into an agreement with the CBS television network under which the NFL's member teams pooled the television rights to their games and authorized the league to sell the rights to the network as a package, with the revenue from the league sales to be distributed equally among the member teams. Under this agreement, CBS was permitted to determine which games would be televised and where the games would be televised. The NFL then petitioned the court for a ruling on whether the terms of its contract with CBS violated the court's 1953 final judgment. The court concluded that the provision giving CBS the power to determine which games would be televised and where was contrary to the final judgment and that execution and performance of the contract was therefore prohibited. This ruling did not, however, apply to a similar contract between the newly formed American Football League (AFL) and the ABC television network, because the AFL was not a party to the court's 1953 final judgment. Concerned

<sup>1</sup> See 47 CFR 76.111 (cable operators), 76.127 (satellite providers), 76.128 (application of sports blackout rules), 76.1506(m) (open video systems).



that the court's ruling placed it at a disadvantage to the AFL, the NFL petitioned Congress for relief, arguing that packaged network contracts were desirable because they allowed the member teams to negotiate for the sale of television rights with a single voice and equalized revenue among the member teams.

4. Congress responded to the NFL's plea for relief with its passage of the Sports Broadcasting Act of 1961. The Sports Broadcasting Act exempts from the antitrust laws joint agreements among individual teams engaged in professional football, baseball, basketball, or hockey that permit the leagues to pool the individual teams' television rights and sell those rights as a package. This statute also expressly permits these four professional sports leagues to black out television broadcasts of home games within the home territory of a member team. At the time the Sports Broadcasting Act was enacted, television blackouts were believed to be necessary to protect gate receipts, and the packaging of individual teams' television rights was thought to be necessary to enhance the financial stability of the leagues by assuring equal distribution of revenues among all teams. The NFL subsequently instituted a practice of blacking out the television broadcast of all home games of its member teams in their home territory, irrespective of whether the games were sold out.

5. In August 1971, the Commission sent a letter to Congress seeking guidance on the Commission's proposed regulatory scheme for the then-nascent cable television industry, which included several proposals relating to sports programming. The Commission noted the exemptions from the anti-trust laws granted to professional sports leagues under the Sports Broadcasting Act and stated that "cable systems should not be permitted to circumvent the purpose of th[is] law by importing the signal of a station carrying the home game of a professional team if that team has elected to black out the game in its home territory." The Commission indicated that it would follow the "spirit and letter" of the Sports Broadcasting Act "since it represents Congressional policy in this important area" and stated that it intended to initiate a rulemaking proceeding on this issue in the near future. The Commission commenced a rulemaking proceeding proposing a sports blackout rule for cable television systems in February 1972.

6. In 1973, during the pendency of the Commission's rulemaking proceeding, Congress enacted Public Law 93-107 in

response to complaints from dissatisfied football fans who were unable to view the sold out home games of their local teams on the public airwaves due to the NFL's blackout policy. Public Law 93-107 added new section 331 to the Communications Act of 1934, as amended (Communications Act), which prohibited professional sports leagues from blacking out the television broadcast of a home game in a team's home territory if the game was televised elsewhere pursuant to a league television contract and the game sold out 72 hours in advance of game time. Public Law 93-107 was intended as a limited experiment to allow all affected parties to assess the impact of the statute and expired by its own terms effective December 31, 1975. Although the statute was not renewed, the NFL subsequently continued to follow the practice of blacking out the television broadcast of home games in a team's home territory only if the game was not sold out 72 hours in advance of game time.

7. In the meantime, the Commission adopted the cable sports blackout rule in 1975 to address concerns that cable systems could frustrate sports leagues' blackout policies by importing the distant signal of a television station carrying the home game of a sports team that has elected to black out the game in its home territory. Specifically, the Commission found that

[g]ate receipts are the primary source of revenue for sports clubs, and teams have a reasonable interest in protecting their home gate receipts from the potentially harmful financial effects of invading telecasts of their games from distant television stations. If cable television carriage of the same game that is being played locally is allowed to take place, the local team's need to protect its gate receipts might require that it prohibit the telecasting of its games on [distant] television stations which might be carried on local cable systems. If this were to result, the overall availability of sports telecasts would be significantly reduced.

The Commission emphasized that its concern was not in ensuring the profitability of organized sports, but rather in ensuring the overall availability of sports telecasts to the general public, which it found was "of vital importance to the larger and more effective use of the airwaves." The cable sports blackout rule adopted by the Commission, which was originally codified in § 76.67 and later renamed, slightly revised, and renumbered as § 76.111, is designed to allow the holder of the exclusive distribution rights to the sports event (*i.e.*, a sports team, league, promoter, or other agent, rather than a broadcaster) to control, through

contractual agreements, the display of that event on local cable systems. Under this rule, the rights holder may demand that a cable system located within the specified zone of protection of a television broadcast station licensed to a community in which a sports event is taking place black out the distant importation of the sports event if the event is not being carried live by a television broadcast station in that community. The zone of protection afforded by the cable sports blackout rule is generally 35 miles surrounding the reference point of the broadcast station's community of license in which the live sporting event is taking place. The cable sports blackout rule applies to all sports telecasts in which the event is not exhibited on a local television station, including telecasts of high school, college, and professional sports, and individual as well as team sports.

8. The Telecommunications Act of 1996 (1996 Act) added a new section 653 to the Communications Act, which established a new framework for entry into the video programming distribution market, the open video system. Congress's intent in establishing the open video system framework was "to encourage telephone companies to enter the video programming distribution market and to deploy open video systems in order to 'introduce vigorous competition in entertainment and information markets' by providing a competitive alternative to the incumbent cable operator." As an incentive for telephone company entry into the video programming distribution market, section 653 provides for reduced regulatory burdens for open video systems subject to the systems' compliance with certain non-discrimination and other requirements set forth in Section 653(b)(1). Section 653(b)(1)(D) directed the Commission to extend to the distribution of video programming over open video systems the Commission's rules on sports blackouts, network nonduplication, and syndicated exclusivity. The Commission amended its rules in 1996 to directly apply the existing cable sports blackout rule to open video systems.<sup>2</sup>

9. In November 1999, Congress enacted the Satellite Home Viewer Improvement Act of 1999 (SHVIA), which provides statutory copyright licenses for satellite carriers to provide additional local and national broadcast programming to subscribers. In enacting

<sup>2</sup> We note that the sports blackout rule for OVS, which is codified at 47 CFR 76.1506(m), references 47 CFR 76.67, which has been renumbered as 47 CFR 76.111. If the sports blackout rule for OVS is retained, we propose to update 47 CFR 76.1506(m) to cite the appropriate rule section, 47 CFR 76.111.

SHVIA, Congress sought to place satellite carriers on an equal footing with cable operators with respect to the availability of broadcast programming. Section 1008 of SHVIA added a new Section 339 to the Communications Act. Section 339(b) directed the Commission to apply the cable network nonduplication, syndicated exclusivity, and sports blackout rules to satellite carriers' retransmission of nationally distributed superstations and, to the extent technically feasible and not economically prohibitive, to extend the cable sports blackout rule to satellite carriers' retransmission of network stations to subscribers.

10. The Commission adopted a sports blackout rule for satellite carriers in November 2000. This rule provides that, on the request of the holder of the rights to a sports event, a satellite carrier may not retransmit a nationally distributed superstation or a network station carrying the live television broadcast of the sports event to subscribers if the event is not being carried live by a local television broadcast station. This rule applies within the same 35-mile zone of protection that applies to cable systems applies to satellite carriers; that is, 35 miles surrounding the reference point of the broadcast station's community of license in which the live sporting event is taking place.

11. The Commission last examined the sports blackout rules more than seven years ago, in a 2005 report to Congress required by the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA). SHVERA directed the Commission to complete an inquiry and submit a report to Congress "regarding the impact on competition in the multichannel video programming distribution market of the current retransmission consent, network nonduplication, syndicated exclusivity, and sports blackout rules, including the impact of those rules on the ability of rural cable operators to compete with direct broadcast satellite ('DBS') industry in the provision of digital broadcast television signals to consumers." SHVERA also directed the Commission to "include such recommendations for changes in any statutory provisions relating to such rules as the Commission deems appropriate." The Commission concluded in its report that the sports blackout rules do not affect competition among MVPDs, that commenters failed to advance any link between the blackout rules and competition among MVPDs, and that no commenter pressed the case for repeal or modification of the sports blackout rules. The Commission therefore declined to recommend any

regulatory or statutory revisions to modify the protections afforded to the holders of sports programming rights.

12. Today, sports leagues' blackout policies determine which games are blacked out locally. These policies are given effect primarily through contractual arrangements negotiated between the leagues or individual teams that hold the rights to the games and the entities to which they grant distribution rights, including television networks, local television broadcast stations, Regional Sports Networks (RSNs), and MVPDs. The Commission's rules, described above, supplement these contractual relationships by requiring MVPDs to black out games that are required by the sports leagues or individual teams to be blacked out on local television stations.

#### *B. Petition for Rulemaking*

13. In November 2011, the Sports Fan Coalition, Inc., National Consumers League, Public Knowledge, League of Fans, and Media Access Project (collectively, Petitioners or SFC) filed a joint Petition for Rulemaking urging the Commission to eliminate the sports blackout rules. The Petitioners assert that, at a time when ticket prices for sports events are at historic highs and high unemployment rates persist, making it difficult for many consumers to afford attending local sports events, the Commission should not support the "anti-consumer" blackout policies of professional sports leagues. The Petitioners also argue that the sports leagues' blackout policies are no longer needed to protect gate receipts and therefore should not be facilitated by the Commission's sports blackout rules. The Petitioners maintain that, "without a regulatory subsidy from the federal government in the form of the [sports blackout rules], sports leagues would be forced to confront the obsolescence of their blackout policies and could voluntarily curtail blackouts." On January 12, 2012, the Media Bureau issued a Public Notice seeking comment on the Petition. Comments in support of the petition were filed by SFC, a group of nine sports economists, several members of Congress, and thousands of individual consumers. The NFL, the Office of the Commissioner of Baseball (Baseball Commissioner), the National Association of Broadcasters, and a group of network television affiliates filed comments opposing the Petition.

#### **III. Notice of Proposed Rulemaking**

14. We propose to eliminate the sports blackout rules. The sports blackout rules were first adopted nearly four decades ago to ensure that the potential loss of

gate receipts resulting from cable system importation of distant stations did not lead sports clubs to refuse to sell their rights to sports events to distant stations, which would reduce the overall availability of sports programming to the public. The rules were extended to open video systems and then to satellite carriers to provide parity between cable and newer video distributors. The sports industry has changed dramatically in the last 40 years, however, and the Petitioners argue that the economic rationale underlying the sports blackout rules may no longer be valid. Below we seek comment on whether we have authority to repeal the sports blackout rules. Next, we examine whether the economic considerations that led to adoption of the sports blackout rules continue to justify our intervention in this area. Finally, we propose to eliminate the sports blackout rules and seek comment on the potential benefits and harms of that proposed action on interested parties, including sports leagues, broadcasters, and consumers.

#### *A. Legal Authority*

15. We seek comment on whether we have the authority to repeal the sports blackout rules. As discussed above, Congress did not explicitly mandate that the Commission adopt the cable sports blackout rule. Rather, the Commission adopted the cable sports blackout rule as a regulatory measure premised on the policy established by Congress in the Sports Broadcasting Act, which exempts from the antitrust laws joint agreements among individual teams engaged in professional football, baseball, basketball, or hockey that permit the leagues to pool the individual teams' television rights and sell those rights as a package and expressly permits these four professional sports leagues to black out television broadcasts of home games within the home territory of a member team. Section 653(b)(1)(D) of the Act, as added by the 1996 Act, directed the Commission to extend to open video systems "the Commission's regulations concerning sports exclusivity (47 CFR 76.67)." Similarly, Section 339(b) of the Communications Act, as added by SHVIA in 1999, directed the Commission to "apply . . . sports blackout protection (47 CFR 76.67) to the retransmission of the signals of nationally distributed superstations by satellite carriers" and, "to the extent technically feasible and not economically prohibitive, apply sports blackout protection (47 CFR 76.67) to the retransmission of the signals of network stations by satellite carriers." Reflecting the language used in these

statutory provisions, the legislative history of Section 339(b) states that Congress's intent was to place satellite carriers on an equal footing with cable operators with respect to the availability of television programming. Petitioners argue that the Commission has the authority to repeal the sports blackout rules for both cable and DBS because Congress never directed the Commission to issue the sports blackout rules in the first instance and only directed the Commission to establish parity between the cable and DBS regimes. Senators Blumenthal and McCain likewise assert that "[i]t is important to note that Congress never instructed the Commission to promulgate the Sports Blackout Rule in the first place. The Commission therefore possesses ample authority to amend the Sports Blackout Rule sua sponte, without any action by Congress." Several commenters opposing elimination of the sports blackout rules assert that Congress mandated the sports blackout rule for DBS. These commenters do not, however, expressly argue that the Commission does not have authority to eliminate the sports blackout rules, either for cable or for DBS and OVS. We tentatively conclude that repeal of the cable sports blackout rule is authorized by the Communications Act, which grants the Commission general rulemaking power, including the authority to revisit its rules and modify or repeal them where it concludes such action is appropriate. We seek comment on this tentative conclusion. We also seek comment on whether we have the authority to repeal the sports blackout rules for DBS and OVS. We observe that when Congress enacted the sports blackout provisions in Sections 339(b) and 653(b)(1)(D) of the Act, Congress directed the Commission to apply to DBS and OVS the sports blackout protection applied to cable, set forth in 47 CFR 76.67, rather than simply directing the adoption of sports blackout rules for those services. The statute does not withdraw the Commission's authority to modify its cable rule at some point in the future, nor is there any indication in the legislative history that Congress intended to withdraw this authority. Given that the DBS and OVS provisions are expressly tied to the cable sports blackout rule, does this evince an intent on the part of Congress that the Commission should accord the same regulatory treatment to DBS and OVS as cable, *i.e.*, if the Commission modifies or repeals the cable rule it should also modify or repeal the DBS and OVS rules? Would Congress's intent

to subject open video systems to reduced regulatory burdens as an incentive for their entry into the video market support an assertion of authority to eliminate the sports blackout rule for OVS if we determine that the cable sports blackout rule is no longer needed? Alternatively, are Congress's directives to the Commission regarding application of sports blackout protection to open video systems and to satellite carriers more appropriately interpreted to mean that the Commission does not have the authority to repeal the sports blackout rules for these types of entities, even if it does so for cable? If we determine that we do not have the authority to repeal the satellite sports blackout rule and/or the OVS sports blackout rule, would it nevertheless be appropriate to repeal the cable sports blackout rule? Would eliminating the sports blackout rule for cable but not for DBS and/or OVS create undue disparities or unintended consequences for any of these entities?

#### *B. Assessing the Continued Need for Sports Blackout Rules*

16. We request comment on whether the economic rationale underlying the sports blackout rules remains valid in today's marketplace. Specifically, we invite commenters to submit information, and to comment on information currently in the record, regarding (i) the extent to which sports events continue to be blacked out locally as a result of the failure of the events to sell out, (ii) the relative importance of gate receipts vis-à-vis other revenues in organized sports today, and (iii) whether local blackouts of sports events significantly affect gate receipts. We invite commenters also to submit any other information that may be relevant in assessing whether the sports blackout rules are still needed to ensure the overall availability of sports telecasts to the public. We ask commenters to assess whether this information, as updated and supplemented, supports retaining or eliminating the sports blackout rules.

##### *1. Blackouts of Sports Events*

17. We seek comment on the extent to which sports events are blacked out locally today due to the failure of the events to sell out. The record indicates that professional football continues to be the sport most affected by blackouts. Under the NFL's longstanding blackout policy, the television broadcast of home games in a team's home territory has been blacked out if the game was not sold out 72 hours in advance of game time. In 1974, just prior to the Commission's adoption of the cable

sports blackout rule, 59 percent of regular season NFL games were blacked out due to failure of the games to sell out. During the 2011 NFL season, only 16 out of 256 regular season games, or six percent of games, were blacked out. These 16 blackouts occurred in just four cities: Buffalo, Cincinnati, San Diego, and Tampa Bay. Thus, the percentage of NFL games that are blacked out today has dropped substantially since the sports blackout rules were adopted, and blackouts of NFL games are relatively rare. Does this substantial reduction in the number of blacked out NFL games suggest that the sports blackout rules are no longer needed? Conversely, does the relatively small number of blackouts of NFL games argue against the need to eliminate the sports blackout rules? To what extent are blackouts of NFL games averted when teams and local businesses work together to "sell" outstanding tickets, thereby allowing local coverage of games? Has the cable sports blackout rule had any impact on the number of NFL blackouts? How should this affect our analysis?

18. We note that in 2012, after the petition for rulemaking in this proceeding was put out for comment, the NFL modified its blackout policy to allow its member teams the option of avoiding a blackout in their local television market if the team sold at least 85 percent of game tickets at least 72 hours prior to the game. Specifically, under this new policy, individual teams are required to determine their own blackout threshold—anywhere from 85 percent to 100 percent—at the beginning of the season and adhere to that number throughout that season. If ticket sales exceed the threshold set by the team, the team must share a higher percentage of the revenue from those ticket sales than usual with the visiting team. We seek comment on the extent to which this new policy has impacted blackouts of NFL games. According to SFC, there were 15 NFL games blacked out affecting five NFL franchises during the 2012 season. Which teams opted to take advantage of the NFL's new blackout policy and what effect, if any, did the NFL's relaxation of its blackout policy have on ticket sales for the home games of these teams? Does the NFL's recent relaxation of its sports blackout policy weigh in favor of or against elimination of the Commission's sports blackout rules?

19. We note that the record is largely silent on the prevalence of blackouts affecting sports other than the NFL; thus we invite comment on the extent to which these sports events are blacked out locally today. As noted above, the sports blackout rules apply to all sports

telecasts in which the event is not available live on a local television station, including telecasts of high school, college, and professional sports, and individual as well as team sports. The Sports Economists assert, however, that “major professional sports leagues in the U.S. [other than the NFL] generally do not use blackout rules to prevent a game from being televised in the locality in which it is being played” because they “sell television rights to only some games through national broadcast agreements.” The Sports Economists explain that

[t]he FCC’s rules currently have little relevance with respect to television rights that are sold by a team rather than the league. The FCC’s rules apply only to games in the local area where they are being played. Thus, the FCC’s blackout rules bear no relation to league policies that prevent telecasts in a team’s home market of a game being played elsewhere. For games that are played locally, the vast majority of teams choose to sell television rights to all or most of their games.  
\* \* \*

To what extent are the sports blackout rules still relevant for sports other than professional football, where individual teams, rather than the league, hold and sell the distribution rights for all or most of the games? In this regard, we seek comment on the importance of retaining the sports blackout rules to protect the viability of any nascent sports leagues that may emerge in the future.

20. Professional baseball is the only other sport for which commenters provided any information on blackouts. Commenters indicate that the number of MLB games blacked out is relatively small because individual MLB teams, rather than the league, negotiate with local broadcast television flagship stations or RSNs for exclusive rights to televise most of the teams’ games, both home and away games, in the teams’ home territories. According to the Baseball Commissioner, in 2011, 151 of 162 regular season games of each MLB team, on average, were televised on the team’s local broadcast television station or RSN. Therefore, the Baseball Commissioner asserts, at most eleven of 162 regular season games of each MLB team were affected by the sports blackout rules. To the extent that more specific data are available regarding the number of home games of MLB teams blacked out pursuant to the Commission’s sports blackout rules, as opposed to MLB’s blackout policies, we request that commenters provide those data. Specifically, for each MLB team, we seek current data on whether exclusive rights to televise most of the teams’ games have been granted to local broadcast flagship stations or RSNs and

the number of home games that are blacked out pursuant to the Commission’s rules. Does the number of games blacked out argue in favor of or weigh against repeal of the sports blackout rules? In addition, for home games that are blacked out under our rules, we seek information as to why they are blacked out. In this regard, the Baseball Commissioner states that “[t]he vast majority of MLB games are not sold out. While there are specific instances in which MLB clubs do take account of gate attendance in making decisions about telecasting patterns (and invoking the [Commission’s sports blackout rules]), MLB clubs do not routinely black out games that are not sold out.” Accordingly, what factors other than attendance are taken into account in determining which MLB games are blacked out locally? How many MLB games were blacked out due to failure to sell out and how many were blacked out for other reasons? If, as reported, few MLB games are blacked out due to failure to sell out, does this support the conclusion that the sports blackout rules are not needed to promote attendance at sports events?

21. We likewise request specific data detailing the extent to which any other sports events, including games of other major professional sports leagues (e.g., the NBA and NHL), and any other professional, collegiate, or high school sports events, are blacked out locally. To the extent that these other sports events are blacked out, are they blacked out due to failure of the event to sell out or for some other reason?

## 2. Gate Receipts and Other Revenues

22. We seek comment on the relative importance of gate receipts vis-à-vis other revenues in sports today. As discussed above, when the Commission adopted the cable sports blackout rule in 1975, it found that “gate receipts were the *primary* source of revenue for sports clubs.” The record before us indicates, however, that the importance of gate receipts has diminished dramatically for NFL clubs in the past four decades, particularly in relation to television revenues. The Sports Economists state that in 1970 the estimated average revenue of an NFL team was approximately \$5 million and the estimated average operating income was less than \$1 million, whereas in 2009 the estimated average revenue of an NFL team was about \$250 million and the estimated average operating income was \$33 million. The Sports Economists further state that ticket sales today account for around 20 percent of NFL revenues, while television revenues account for around 60 percent.

According to SFC, television revenues, which are shared equally among teams, are 80 times what they were in 1970 and now account for 50 percent of the NFL’s total revenues. SFC asserts that gate receipts, which are split 60/40 between the home team and visiting team, account for only 21.6 percent of the NFL’s total revenues. These figures indicate that television revenues have replaced gate receipts as the most significant source of revenue for NFL clubs. Does this shift in the source of revenue for NFL clubs undermine the economic rationale for the sports blackout rules? We invite commenters to supplement the record with more current data on NFL revenues, including total revenues, gate receipts, and television revenues, to the extent that such data are available. If gate receipts are no longer the primary or most significant source of revenue for NFL clubs, are the sports blackout rules still necessary to promote attendance at games and to ensure the overall availability of telecasts of these sports to the public? If so, why?

23. There is scant information in the record regarding the significance of gate receipts in relation to other sources of revenue for sports other than professional football. The Baseball Commissioner states only that, “in any given year, ticket sales and television revenues account for roughly the same portion of [MLB’s] revenues and both are critically important to an MLB club’s economic health.” To the extent that commenters assert that the sports blackout rules remain necessary to ensure the overall availability of telecasts of particular sports to the public, we request that they provide current revenue data for such sports, including total revenues, television revenues, and gate receipts. We note that, during recent years, MLB has entered into other revenue-generating ventures, such as the MLB Channel, a baseball-related programming channel available to MVPD subscribers, and Extra Innings, which offers regular season game premium (pay) packages through MVPDs to their subscribers. MLB also offers regular season game packages directly to customers through MLB.tv. Such programming is streamed over the Internet and can be viewed on computers and mobile devices, as well as on televisions using devices such as Apple TV. Moreover, many teams either own the RSNs that carry their game telecasts or have obtained ownership interests in RSNs. Does the emergence of these additional revenue sources impact the relative importance of gate receipts and, accordingly, the continued

need for the sports blackout rules? If gate receipts are not the primary or most significant source of revenue for these sports, why are the sports blackout rules necessary to ensure the overall availability of telecasts of these sports to the public?

### 3. Effect of Blackouts on Gate Receipts

24. We seek comment on the extent to which local blackouts of sports events affect attendance and gate receipts at those events and the extent to which the cable sports blackout rule itself affects attendance and gate receipts at sports events. As discussed above, the sports blackout rules are intended to address concerns that MVPDs' importation of a distant signal carrying a blacked-out sports event could lead to lost revenue from ticket sales, which might cause sports leagues to expand the reach of blackouts by refusing to sell their rights to sports events to all distant stations. The objective of the sports blackout rules is not to ensure the profitability or financial viability of sports leagues, but rather to ensure the overall availability of sports programming to the general public. Thus, we are interested in gate receipts and other revenues of sports leagues only to the extent that such revenues are relevant to this objective. Based on their review of several econometric studies of attendance at NFL games as well as other team sports in the U.S. and Europe, the Sports Economists conclude that there is no evidence that local blackouts of NFL games significantly affect either ticket sales or no-shows at those games. We seek comment on the Sports Economists' conclusion and the underlying studies on which it relies. Do these studies support the conclusion that our sports blackout rules are no longer needed? For example, if local blackouts of NFL games do not significantly affect either ticket sales or no-shows at those games, does it follow that the cable sports blackout rule has no significant effect on attendance? Additionally, we invite commenters to submit any additional studies or evidence showing the extent to which local blackouts of NFL games impact gate receipts at those games and the extent to which the cable sports blackout rule itself impacts gate receipts. In particular, we note that the NFL asserts that its blackout policy, as supported by the Commission's sports blackout rules, is designed to promote high attendance at games. We invite the NFL and other interested commenters to submit any available data or evidence indicating that the NFL's blackout policy in fact has the intended effect of promoting attendance at games. As

noted above, only four cities were affected by local blackouts of NFL games in 2011: Buffalo, Cincinnati, San Diego, and Tampa Bay; in 2012, local blackouts of NFL games were limited to Buffalo, Cincinnati, Oakland, San Diego, and Tampa Bay. We seek comment on whether certain teams or cities are routinely disproportionately affected by local blackouts of NFL games and, if so, why. For example, some commenters suggest that certain cities are more severely impacted by blackouts because of conditions in the local economy (e.g., locally high unemployment) or a large stadium capacity in a city with a relatively small population. If these are the factors that lead to failure to sell out games, does blacking out a game promote attendance at future games in those cities? Are any cities affected by these factors able to sellout games on a regular basis? If so, why? To what extent does a team's performance lead to poor attendance and blackouts? For example, are blackouts more common when a team is not in playoff contention? Should this affect our analysis? If so, how?

25. Are the sports blackout rules necessary to sustain gate receipts and other revenues for NFL clubs? Commenters who assert that eliminating the sports blackout rules would result in a significant reduction in gate receipts or other revenues for NFL clubs should quantify or estimate the anticipated reduction and explain the basis for their estimates. We also seek comment on the connection between any such lost revenues and the willingness of teams to enter into agreements allowing broadcast coverage of their games, maximizing the availability of such broadcasts to the public.

26. There is no specific information in the record regarding the effect of blackouts on gate receipts for any other sports events. We seek comment on whether blackouts have any significant effect on gate receipts for any sports events other than NFL games.

Commenters should provide any available data or evidence to support their positions. What impact, if any, would elimination of the sports blackout rules be expected to have on gate receipts and other revenues for these sports? To the extent that commenters argue that eliminating the sports blackout rules would result in a significant reduction in gate receipts or other revenues for these sports, we request that they quantify or estimate the anticipated reduction and explain the basis for their estimates.

27. Some commenters suggest that blacking out games may actually harm, rather than support, ticket sales. We

seek comment on whether blacking out sports events may have the unintended effect of alienating sports fans and discouraging their attendance at home games. According to the Petitioners, recent empirical studies suggest that televising professional sports may actually have a positive effect on attendance at home games. Does televising sports events serve to generate interest among sports fans and thereby promote higher attendance at home games in the long run? If this is the case, then why would a professional sports league, such as the NFL, ever seek to black out games? For example, do commenters believe that the NFL is operating pursuant to a mistaken understanding of the relationship between blackouts and attendance? Or do commenters believe that the NFL has reason for maintaining its blackout policy other than attendance? Commenters are invited to submit any studies or evidence supporting the view that televising sports events encourages attendance at home games.

### 4. Other Relevant Data

28. We invite commenters to submit any other information or data that they believe is relevant to our assessment of whether the sports blackout rules remain necessary to ensure the overall availability of sports telecasts to the public. For example, are changes in the video distribution market in the 40 years since the sports blackout rules were originally adopted, such as those described above, relevant to our assessment? To what extent do sports leagues distribute games via such premium services today and what impact do such premium services have on the leagues' revenues and blackout policies? Commenters should explain how any such information supports or undercuts the economic basis for the sports blackout rules.

### *C. Elimination of the Sports Blackout Rules*

29. We propose to eliminate the sports blackout rules. With respect to professional football, the sport most affected by the sports blackout rules, it appears from the existing record that television revenues have replaced gate receipts as the most significant source of revenue for NFL clubs in the 40 years since the rules were first adopted. Moreover, the record received thus far indicates no direct link between blackouts and increased attendance at NFL games. The record also suggests that the sports blackout rules have little relevance for sports other than professional football, because the distribution rights for most of the games

in these sports are sold by individual teams, rather than the leagues. Finally, it appears that the sports blackout rules are unnecessary because sports leagues can pursue local blackout protection through private contractual negotiations. Thus, it appears that the sports blackout rules have become obsolete. Accordingly, if the record in this proceeding, as updated and supplemented by commenters, confirms that the sports blackout rules are no longer necessary to ensure the overall availability to the public of sports telecasts, we propose to repeal these rules. We seek comment on this proposal.

30. We seek comment on how elimination of the sports blackout rules would affect sports leagues and teams and their ability, as holders of the exclusive distribution rights to their games, to control the distribution of home games in the teams' home territories. As discussed above, the sports leagues, not the Commission, are the source of sports blackouts. And the Commission's rules supplement the contractual relationships between the leagues or individual teams that hold the rights to the games and the entities to which they grant distribution rights by requiring MVPDs to black out games that are required by the sports leagues or individual teams to be blacked out on local television stations. To the extent that the Commission's rules are no longer needed to assure the continued availability of sports programming to the public, does the Commission have any continued interest in supplementing these contractual relationships? Should it instead be left to the sports leagues and individual teams to negotiate in the private marketplace whatever local blackout protection they believe they need?

31. Several commenters argue that the compulsory copyright licenses granted to MVPDs under Sections 111 and 119 of the Copyright Act would make it difficult or impossible for sports leagues or teams to negotiate the protection provided by the sports blackout rules through private contracts. The compulsory licenses permit cable systems and, to a more limited extent, satellite carriers to retransmit the signals of distant broadcast stations without obtaining the consent of the sports leagues whose games are carried on those stations, when the carriage of such stations is permitted under FCC rules. Absent the sports blackout rules, these commenters argue, an MVPD would be able to take advantage of the compulsory license to retransmit the signal of a distant station carrying a

game that has been blacked out locally by a sports league or team.

32. We seek comment on how the compulsory licenses would affect the ability of sports leagues and sports teams to obtain through market-based negotiations the same protection that is currently provided by the sports blackout rules. The NFL contends that, since it contracts with the CBS, NBC, and FOX networks for broadcast distribution of its games, it lacks privity with the local network affiliates that carry the games and with the MVPDs that retransmit the broadcast signals. Thus, it claims that ensuring that all of the other parties involved in the distribution of its games are contractually bound to honor the NFL's sports blackout policy would require rewriting hundreds of contracts, including contracts between the NFL and the CBS, NBC, and FOX networks, contracts between the networks and their affiliates, and contracts between the network affiliates and the MVPDs. The Petitioners assert that this argument ignores the direct privity of contract the sports leagues have with the MVPDs themselves, noting that virtually all MVPDs carry networks or game packages owned directly by the sports leagues, such as the NFL Network, MLB Network, NBA TV, NHL Network, and NFL Sunday Ticket (DIRECTV). We seek comment on the extent to which the sports leagues contract directly with MVPDs for carriage of networks or game packages owned directly by the sports leagues. Do such contracts already include some form of blackout protection and, if so, what protection do these contracts provide? In this connection, the Commission has previously found that sports leagues routinely negotiate with MVPDs greater blackout protection than that afforded by the sports blackout rules, and the comments in the record support this finding. For example, sports leagues and teams contractually negotiate with MVPDs blackouts of games throughout the teams' home territories, which generally extend well beyond the limited 35-mile zone of protection afforded by our sports blackout rules. In addition, the sports blackout rules afford blackout protection only to the home teams, whereas sports leagues or teams often negotiate blackout protection for both the home and away teams. Accordingly, if sports leagues and teams are able to obtain greater protection than that afforded under the sports blackout rules in arm's length marketplace negotiations, why do they need the sports blackout rules to avoid the impact of the compulsory licenses?

33. Moreover, the Commission has found that "[s]ports leagues control both broadcast carriage and MVPD retransmission of their programming." It observed that a broadcaster cannot carry a sports event without the permission of the sports leagues or clubs that hold the rights to the event and, under the retransmission consent rules, MVPDs, with limited exceptions, cannot carry a broadcaster's signal without the permission of the broadcaster. Thus, the Commission reasoned that a sports league could prevent unwanted MVPD retransmission through its contracts with broadcasters by requiring, as a term of carriage, the deletion of specific sports events. Because the sports leagues could obtain local blackout protection through their contracts with broadcast stations, the Commission suggested that the sports leagues may not need the sports blackout rules to prevent MVPDs from using the compulsory licenses to carry blacked-out games. Instead, it stated that the sports blackout rules may serve primarily as an enforcement mechanism for existing contracts between broadcasters and sports leagues. We seek comment on this analysis. Could sports leagues or teams prevent MVPDs from retransmitting certain sports events through their contracts with broadcasters? If so, especially given the popularity of certain sports programming, would leagues such as the NFL be well positioned to secure blackout protection through private contractual negotiations? Would leagues need to renegotiate existing contracts with broadcasters to secure such protection? If so, should that affect our analysis? What effect, if any, would the NFL's lack of direct privity with the local network affiliates that carry the games have on its ability to control MVPD retransmission? What are the costs and benefits to sports leagues and teams of our elimination of the sports blackout rules? To the extent possible, we encourage commenters to quantify any costs and benefits and to submit supporting data.

34. We seek comment also on whether and how repeal of the sports blackout rules would affect consumers. We received more than 7,500 comments on the Petition from individual consumers who support elimination of the sports blackout rules. These comments indicate that sports blackouts, while less frequent now than when the sport blackout rules were first adopted, are still a significant source of frustration for consumers. Some of these consumers are disabled or elderly sports fans who are physically unable to attend games in

person and rely on television (either broadcast or pay TV) to watch their favorite teams. Others complain that they can no longer afford to attend games due to high ticket prices, the economy, or reduced income following retirement; that they already subsidize professional sports through publicly funded stadiums and should be able to watch the games at home; or that they pay a substantial premium to watch their favorite NFL team on DIRECTV's NFL Sunday Ticket but are sometimes unable to watch due to a blackout, even though they may live 150 miles or more from the team's stadium. We seek comment on what impact, if any, repeal of the Commission's sports blackout rules would have on these and other consumers.

35. The Petitioners acknowledge that eliminating the Commission's sports blackout rules alone likely would not end local sports blackouts as sports fans may wish. We note that the leagues' underlying blackout policies would remain, and, as discussed above, the leagues may be able to obtain the same blackout protection provided under our rules through free market negotiations. The leagues could still require local television stations to black out games; thus, consumers that rely on over-the-air television would still be unable to view blacked-out games. Moreover, repeal of our sports blackout rules alone would not provide relief to consumers that are subject to blackouts resulting from the leagues' use of expansive home territories. Nevertheless, the Petitioners assert that, "unless and until the Commission eliminates the [sports blackout rules], the sports leagues will be under no pressure to contractually negotiate for the protection that they claim is necessary." The Petitioners suggest that, if the leagues find that such negotiations would be too daunting, eliminating the sports blackout rules may compel the leagues to lower ticket prices until all seats are sold out or perhaps to end blackouts altogether. We seek comment on whether there is any benefit to consumers of repealing the sports blackout rules if the sports leagues' underlying blackout policies remain. Is removing unnecessary or obsolete regulations in itself a sufficient justification for eliminating the sports blackout rules, even if there is no direct or immediate benefit to consumers? If the evidence in this proceeding, including any data or studies submitted by commenters, suggests that there are no tangible benefits to retaining the sports blackout rules but that these rules also do not cause any tangible harms, should the Commission repeal the

sports blackout rules? Would removing the Commission's tacit endorsement of the leagues' blackout policies serve the public interest? Are the leagues more likely to relax or reconsider their blackout policies if the Commission's sports blackout rules are repealed? How does our analysis of the issues differ between professional sports leagues which have been granted exemptions from the antitrust laws and sports leagues which have not been granted antitrust protections?

36. Further, we invite comment on any potential harm to consumers of eliminating the sports blackout rules. Some commenters express concern that eliminating the sports blackout rules could accelerate the migration of sports from free over-the-air television to pay TV, which would be harmful to consumers who cannot afford pay TV. As noted above, the compulsory copyright licenses granted to MVPDs apply to the retransmission of broadcast signals, not to pay TV content. According to NAB, if the sports blackout rules are eliminated, "sports leagues wishing to retain control over distribution of their content would have an incentive to move to pay platforms where the compulsory license would not undermine their private agreements." Similarly, the NFL asserts that eliminating the sports blackout rules "would make broadcast television distribution more difficult, expensive and uncertain and accordingly would make cable network distribution a more appealing prospect." What percentage of consumers watch the sports programming they view on broadcast television channels rather than pay TV or via the Internet using premium services such as MLB.tv? Would repeal of the sports blackout rules hasten the migration of NFL games from broadcast television channels to pay TV? If so, is it appropriate for the Commission to have the objective of preventing such a migration? We note that the NFL recently extended its contracts with the CBS, FOX, and NBC television networks, ensuring that many NFL games will remain on broadcast television channels at least through the 2022 season. In view of these contract extensions, it appears unlikely that NFL games would migrate further from broadcast television channels to pay TV in the near future. We nevertheless seek comment on whether repeal of the sports blackout rules would likely encourage migration of NFL games to pay TV in the immediate future or in the longer term. What effect, if any, would repeal of the sports blackout rules have on migration to pay TV of sports other

than professional football? In this regard, the record suggests that other professional sports teams already distribute a majority of their regular season games via RSNs and other cable networks. Is elimination of the sports blackout rules likely to result in any further migration of these sports from broadcast television channels to pay TV? Are there any other potential harms to consumers from repealing the sports blackout rules? We encourage commenters to quantify, to the extent possible, any benefits and costs to consumers of eliminating the sports blackout rules and to submit supporting data.

37. Some commenters argue that eliminating the sports blackout rules would undermine broadcasters' local program exclusivity and harm localism. These commenters assert that the sports blackout rules, together with the network non-duplication and syndicated exclusivity rules, support local broadcasters' investments in high quality, diverse informational and entertainment programming. By hindering the ability of local broadcast stations to obtain and enforce exclusive local program rights, they assert, elimination of the sports blackout rules would make it more difficult for the stations to attract advertising, which in turn would reduce their ability to invest in local information programming and popular programming. Would elimination of the sports blackout rules have a negative impact on localism? What, if any, costs and benefits would repeal of the sports blackout rules have on broadcasters? To the extent possible, we encourage commenters to quantify any costs and benefits and to submit data supporting their positions.

38. We seek comment also on whether and how elimination of the sports blackout rules would affect any other entities. Some commenters assert that under the Copyright Act any change in the sports blackout rules will trigger a proceeding before the Copyright Royalty Tribunal to adjust the compulsory licensing rates that cable systems pay. Would such a rate adjustment proceeding be mandatory or discretionary on the part of the Copyright Royalty Tribunal? In this regard, we note that the Copyright Act provides that, if the sports blackout rules are changed, the compulsory licensing rates "*may be adjusted* to assure that such rates are reasonable in light of the changes." What burdens and costs would a rate adjustment proceeding impose on the Copyright Royalty Tribunal and any other entities? Are there any other entities that would be impacted by elimination of the sports



blackout rules? If so, what are the benefits and costs of elimination for those entities? We request that commenters quantify any benefits and costs to the extent possible and submit supporting data.

39. Finally, we seek comment on whether, as an alternative to outright repeal of the sports blackout rules, we should make modifications to these rules. If so, what modifications should we make, and why would such modifications be preferable to repeal of the sports blackout rules? Commenters that propose any such modifications should quantify the benefits and costs of their proposals and provide supporting data.

#### IV. Procedural Matters

##### A. Initial Regulatory Flexibility Act Analysis

40. As required by the Regulatory Flexibility Act, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules considered in the attached *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* as indicated on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

41. The *NPRM* proposes to eliminate the sports blackout rules, which prohibit certain multichannel video programming distributors (MVPDs) (cable, satellite, and open video systems (OVS)) from retransmitting, within a protected local blackout zone, the signal of a distant broadcast station carrying a live sports event if the event is not available live on a local television broadcast station. The sports blackout rules were originally adopted nearly 40 years ago, when the primary source of revenue for sports leagues was game ticket sales. The sports blackout rules were intended to ensure that the potential loss of ticket sales resulting from MVPD retransmission of distant stations did not cause sports leagues to refuse to sell their rights to sports events to the distant stations, thereby reducing the overall availability of sports

telecasts to the public. The sports industry has changed dramatically in the past four decades, however, and it appears that the sports blackout rules may no longer be necessary to assure the overall availability of sports programming.

42. The *NPRM* tentatively concludes that the Commission has the authority to eliminate the cable sports blackout rule under its general rulemaking power, given that Congress did not explicitly mandate that the Commission adopt the cable sports blackout rule. Because Congress directed the Commission to extend the sports blackout protection applied to cable to satellite and OVS, the *NPRM* seeks comment on whether the Commission also has the authority to repeal the sports blackout rules for satellite and OVS. In addition, the *NPRM* seeks comment on whether there is a continued need for the sports blackout rules. In particular, the *NPRM* seeks comment on whether the economic rationale underlying the sports blackout rules is still valid. Finally, the *NPRM* proposes to repeal the sports blackout rules and seeks comment on the benefits and costs of such repeal on interested parties, including the sports leagues, broadcasters, and consumers.

##### Legal Basis

43. This *NPRM* is adopted pursuant to the authority found in Sections 1, 4(i), 4(j), 303(r), 339(b), 653(b) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 339(b), and 573(b).

##### Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

44. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

45. *Wired Telecommunications Carriers*. The 2007 North American Industry Classification System ("NAICS") defines "Wired Telecommunications Carriers" as follows: "This industry comprises

establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.

Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry." All establishments listed above are included in the SBA's broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small entities.

46. *Cable Television Distribution Services*. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services." The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer



employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of such businesses can be considered small entities.

47. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Industry data shows that there were 1,141 cable companies at the end of June 2012. Of this total, all but ten cable operators nationwide are small under this size standard. In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

48. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." There are approximately 56.4 million incumbent cable video subscribers in the United States today. Accordingly, an operator serving fewer than 564,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators

under the definition in the Communications Act.

49. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public." The SBA has created the following small business size standard for such businesses: Those having \$14 million or less in annual receipts. The Commission has estimated the number of licensed commercial television stations to be 1,386. In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less. We therefore estimate that the majority of commercial television broadcasters are small entities.

50. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

51. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396. These stations are non-profit, and therefore considered to be small entities.

52. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or

fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small entities. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled "Cable and Other Program Distribution." The definition of Cable and Other Program Distribution provided that a small entity is one with \$12.5 million or less in annual receipts. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network. Each currently offer subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined under the superseded SBA size standard would have the financial wherewithal to become a DBS service provider.

53. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 show that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small entities.

54. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by

satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 show that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small entities.

55. *Open Video Systems.* The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of these businesses can be considered small entities. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the other entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

56. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: "This industry comprises establishments

primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. . . . These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers." The SBA has developed a small business size standard for this category, which is: all such businesses having \$15 million dollars or less in annual revenues. Census data for 2007 show that there were 659 establishments that operated that year. Of that number, 462 operated with annual revenues of \$9,999,999 dollars or less. One hundred ninety-seven (197) operated with annual revenues of between \$10 million and \$100 million or more. Thus, under this size standard, the majority of such businesses can be considered small entities.

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

57. The proposed rule changes discussed in the *NPRM* would affect compliance requirements. The proposed rule changes would eliminate the sports blackout rules, which prohibit certain MVPDs from televising the home game of a sports team within a specified geographic area surrounding a television broadcast station licensed to the community in which the game is being played if the game is not available live on a television broadcast station in that community.

#### Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

58. The RFA requires an agency to describe any significant alternatives that might minimize any significant economic impact on small entities. Such alternatives may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

59. As discussed in the *NPRM*, repeal of the sports blackout rules would not eliminate the sports leagues' underlying blackout policies. Rather, it would

simply remove Commission support for these policies. Sports leagues would still be able to require local television broadcast stations to black out games. In addition, sports leagues would likely be able to obtain the same protection afforded under the sports blackout rules either through market-based negotiations with MVPDs or through their contracts with broadcasters by requiring, as a term of carriage, the deletion of specific sports events. Accordingly, we believe that repeal of the sports blackout rules would impose only minimal burdens on any affected entities. For this reason, an analysis of alternatives to the proposed rule changes is unnecessary. We invite comment on whether there are any alternatives we should consider that would minimize any adverse impact on small entities, but which maintain the benefits of our proposal.

#### Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

##### 60. None.

#### B. Paperwork Reduction Act

61. This *Notice of Proposed Rulemaking* proposes no new or modified information collection requirements. In addition, therefore, it does not propose any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002.

#### C. Ex Parte Rules

62. *Permit-But-Disclose.* The proceeding this *NPRM* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments,

memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

#### D. Filing Requirements

63. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

■ **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>.

■ **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

1. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445

12th St. SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

2. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

3. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington, DC 20554.

64. **People With Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

65. For additional information on this proceeding, contact Kathy Berthot, [Kathy.Berthot@fcc.gov](mailto:Kathy.Berthot@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

#### V. Ordering Clauses

66. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), 339(b), and 653(b) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 339(b), and 573(b) this *Notice of Proposed Rulemaking* is adopted.

67. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking* in MB Docket No. 12-3, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

#### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications

Commission proposes to amend 47 part 76 as follows:

#### PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

#### § 76.111 [Removed]

■ 2. Remove § 76.111.

■ 3. Amend § 76.120 by removing paragraph (e)(3) and revising the section heading to read as follows:

#### § 76.120 Network non-duplication protection and syndicated exclusivity rules for satellite carriers: Definitions.

\* \* \* \* \*

#### §§ 76.127 and 76.128 [Removed]

■ 4. Remove §§ 76.127 and 76.128.

■ 5. Amend § 76.130 by revising the first sentence to read as follows:

#### § 76.130 Substitutions.

Whenever, pursuant to the requirements of the network program non-duplication or syndicated program exclusivity rules, a satellite carrier is required to delete a television program from retransmission to satellite subscribers within a zip code area, such satellite carrier may, consistent with this subpart, substitute a program from any other television broadcast station for which the satellite carrier has obtained the necessary legal rights and permissions, including but not limited to copyright and retransmission consent. \* \* \*

#### § 76.1506 [Amended]

■ 6. Amend § 76.1506 by removing paragraph (m) and redesignating paragraphs (n) and (o) as paragraphs (m) and (n).

[FR Doc. 2014-01338 Filed 1-23-14; 8:45 am]

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# Notices

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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 COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Applications and Reports for Registration as a Tanner or Agent.

*OMB Control Number:* 0648-0179.

*Form Number(s):* NA.

*Type of Request:* Regular submission (extension of a current information collection).

*Number of Respondents:* 57.

*Average Hours Per Response:* 2 hours.

*Burden Hours:* 114.

*Needs and Uses:* This request is for extension of a current information collection.

The Marine Mammal Protection Act exempts Alaskan natives from the prohibitions on taking, killing, or injuring marine mammals if the taking is done for subsistence or for creating and selling authentic native articles of handicraft or clothing. The natives need no permit, but non-natives who wish to act as a tanner or agent for such native products must register with NOAA and maintain and submit certain records. The information is necessary for law enforcement purposes.

*Affected Public:* Business or other for-profit organizations; state, local or tribal governments.

*Frequency:* Annually and on occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* OIRA\_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482-0336, Department of

Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at [JJessup@doc.gov](mailto:JJessup@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

Dated: January 17, 2014

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2014-01408 Filed 1-23-14; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Order No. 1926]

#### Approval of Subzone Status; Philips 66 Company; Rodeo, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Foreign-Trade Zones Act provides for “. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

*Whereas*, the Board's regulations (15 CFR part 400) provide for the establishment of subzones when existing zone facilities cannot serve the specific use involved;

*Whereas*, the City and County of San Francisco, grantee of Foreign-Trade Zone 3, has made application to the Board for the establishment of a subzone at the facility of Philips 66 Company, located in Rodeo, California (FTZ Docket B-89-2013, docketed 10-17-2013);

*Whereas*, notice inviting public comment has been given in the **Federal Register** (78 FR 64196, 10-28-2013) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas*, the Board adopts the findings and recommendations of the

examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

NOW, THEREFORE, the Board hereby approves subzone status at the facility of Philips 66 Company, located in Rodeo, California (Subzone 3E), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 2nd day of January 2014.

**Christian Marsh,**

*Acting Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 2014-01297 Filed 1-23-14; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Special Subsistence Permits and Harvest Logs for Pacific Halibut in Waters Off Alaska

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before March 25, 2014.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at [JJessup@doc.gov](mailto:JJessup@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instruments and instructions should be directed to Patsy A. Bearden, (907) 586-7008 or [Patsy.Bearden@noaa.gov](mailto:Patsy.Bearden@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This request is for extension of a currently approved information collection.

This information collection describes special permits issued to participants in the Pacific halibut subsistence fishery in waters off the coast of Alaska and any appeals resulting from denials. The National Marine Fisheries Service (NMFS) designed the permits to work in conjunction with other halibut harvest assessment measures. Subsistence fishing for halibut has occurred for many years among the Alaska Native people and non-Native people. Special permits are initiated in response to the concerns of Native and community groups regarding increased restrictions in International Pacific Halibut Commission Area 2C and include Community Harvest Permits, Ceremonial Permits, and Educational Permits.

A Community Harvest Permit allows the community or Alaska Native tribe to appoint one or more individuals from its respective community or tribe to harvest subsistence halibut from a single vessel under reduced gear and harvest restrictions. Ceremonial and Educational Permits are available exclusively to Alaska Native tribes. Eligible Alaska Native tribes may appoint only one Ceremonial Permit Coordinator per tribe for Ceremonial Permits or one authorized Instructor per tribe for Educational Permits.

Except for enrolled students fishing under a valid Educational Permit, special permits require persons fishing under them to also possess a Subsistence Halibut Registration Certificate (SHARC) (see OMB Control No. 0648-0460) which identifies those persons who are currently eligible for subsistence halibut fishing. Each of the instruments is designed to minimize the reporting burden on subsistence halibut fishermen while retrieving essential information.

## II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include online, email of electronic forms, mail, and facsimile transmission of paper forms. Educational Permits may not be applied for online.

## III. Data

OMB Control Number: 0648-0512.  
Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

*Affected Public:* Individuals or households; state, local, or tribal government.

*Estimated Number of Respondents:* 33.

*Estimated Time per Response:* Permit applications, 10 minutes; Community harvest log, 30 minutes; Ceremonial or educational harvest log, 30 minutes; Appeal for permit denial, 4 hours.

*Estimated Total Annual Burden Hours:* 17.

*Estimated Total Annual Cost to Public:* \$21 in recordkeeping/reporting costs.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 17, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014-01407 Filed 1-23-14; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XD096

### Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

**ACTION:** Notice of meetings of the South Atlantic Fishery Management Council's Visioning Project (Port Meetings).

**SUMMARY:** The South Atlantic Fishery Management Council (SAFMC) will

hold a series of public port meetings as part of the Council Visioning Project.

**DATES:** The meetings will be held from February through April 2014. Meeting dates will be posted on the SAFMC Web site, sent out via email distribution, and other Council related outreach publications (newsletter, news releases, social media platforms, postcards, etc.).

**ADDRESSES:** *Meeting address:* The meetings will be held in communities in North Carolina, South Carolina, Georgia and Florida. Meeting locations and addresses will be posted on the SAFMC Web site, sent out via email distribution, and other Council related outreach publications (newsletter, news releases, social media platforms, postcards, etc.).

*Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Amber Von Harten, Fishery Outreach Specialist, SAFMC; telephone: (843) 571-4366 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: [amber.vonharten@safmc.net](mailto:amber.vonharten@safmc.net).

**SUPPLEMENTARY INFORMATION:** The South Atlantic Fishery Management Council is developing a long-term vision and strategic plan for managing the snapper grouper fishery along with the process for engaging stakeholders in the project. The Council views this as a plan to work cooperatively with all stakeholders having fishery interests. The visioning and strategic planning project will evaluate and refine current goals, objectives and strategies for managing the snapper grouper fishery through informed public input via port meetings.

The items of discussion during the port meetings are as follows:

Participants will discuss ideas for future long-term management of the snapper grouper fishery.

Meetings will be hosted by fishermen and others with fishery interests and facilitated by Council staff. In addition, fishermen and others with fishery interests will assist with promoting the meetings in their communities. Members of the public are encouraged to view the SAFMC Web site for more details as they become available under the Visioning Project page at [www.safmc.net](http://www.safmc.net).

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

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

**Dated:** January 21, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014-01417 Filed 1-23-14; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XD097**

#### Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's (Council) Mackerel, Squid, and Butterfish Advisory Panel will hold a public meeting.

**DATES:** The meeting will be held on February 10, 2014, from 2 p.m. until 5 p.m.

**ADDRESSES:** The meeting will be held via webinar. Webinar registration and connection details are available at: <http://www.mafmc.org/actions/msb-framework-9>.

**Council address:** Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526-5255.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to gather input from the Advisory Panel on upcoming Council actions, primarily Framework 9 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. Framework 9 addresses concerns about slippage events on observed fishing trips. Slippage events occur when all or a portion of a haul is released before observers can document/sample the catch.

Although issues not contained in this notice may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens

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

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526-5251, at least 5 days prior to the meeting date.

**Dated:** January 21, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014-01416 Filed 1-23-14; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XD098**

#### Mid-Atlantic Fishery Management Council (MAFMC); Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (Council) will hold public meetings.

**DATES:** The meetings will be held on Tuesday, February 11, 2014 through Thursday, February 13, 2014. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held at the Double Tree by Hilton-Riverfront, 100 Middle St., New Bern, NC 28560; telephone: (252) 638-3585.

**Council address:** Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674-2331.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526-5255.

#### SUPPLEMENTARY INFORMATION:

##### Tuesday, February 11, 2014

9 a.m.—The Council will convene.

9 a.m. until 5 p.m.—The Climate Change and Fishery Science Workshop will be held.

##### Wednesday, February 12, 2014

9 a.m.—The Council will convene.

9 a.m. until 11:45 a.m.—The Mackerel, Squid, Butterfish Committee will meet as a Committee of the Whole.

11:45 a.m. until 12 p.m.—The Ricks E Savage Award will be presented.

1 p.m. until 2 p.m.—Meeting 1 for the Omnibus Allowable Biological Catch (ABC) Framework will be held.

2 p.m. until 3 p.m.—Meeting 1 for Framework 8 to the Summer Flounder, Scup, and Black Sea Bass Plan regarding Scup Gear Restricted Areas (GRAs) will be held.

3 p.m. until 4 p.m.—The Standardized Bycatch Reporting Methodology Amendment will be discussed.

4 p.m. until 5 p.m.—A Data Portal Presentation will be held.

5 p.m. until 6 p.m.—The South Atlantic Fishery Management Council (SAFMC) will hold a public hearing pertaining to Coastal Migratory Pelagics (CMP) Amendment 1.

##### Thursday, February 13, 2014

8:30 a.m. until 9:30 a.m.—Monkfish Framework 8 will be discussed.

9:30 a.m. until 1 p.m.—The Council will hold its regular Business Session to receive Organizational Reports, the New England and South Atlantic Liaison Reports, the Executive Director's Report, the Science Report, Committee Reports, and conduct any continuing and/or new business.

Agenda items by day for the Council's Committees and the Council itself are:

On Tuesday, February 11—A Climate Change and Fishery Science Workshop will be held. The purpose of the workshop is to inform the Council about the state of climate science relative to prediction of climate change and the expected ecosystem impacts/changes which may occur over the next two decades. Workshop outcomes will help the Council in the development of an adaptive fishery management framework that will effectively deal with ecosystem responses related to climate change.

On Wednesday, February 12—The Mackerel, Squid, Butterfish Committee will meet as a Committee of the Whole to discuss the Slippage Framework (Framework Meeting 2—action to minimize slippage events on observed mackerel trips) and the Omnibus Observer Funding Amendment (review purpose, goals, and preliminary alternatives). The Ricks E Savage Award will be presented. Meeting 1 of the Omnibus ABC Framework (tier 2 assessment revision, multiyear issues, automatic incorporation of new reference points) will be discussed. Meeting 1 for Framework 8 to the Summer Flounders, Scup, and Black

Sea Bass Plan regarding Scup GRAs will be held to review data/analyses on the current Northern and Southern GRAs and consider options to maintain, modify, or remove the current GRAs. The Standardized Bycatch Reporting Methodology Amendment will be discussed for approval and submission. A Data Portal Presentation will be held to review project goals, methods and illustrative draft maps of Mid-Atlantic fishing activity summarized by port and gear groups and provide advice to the MARCO Portal Team on best approaches and opportunities for engaging fishermen to review, discuss and improve project data and maps. The SAFMC will hold a public hearing pertaining to Amendment 1. The amendment will update the Annual Catch Limits (ACLs) for Atlantic migratory group Spanish mackerel and Gulf migratory group Spanish mackerel based on the recent stock assessment and new ABC recommendations from the Scientific and Statistical Committees (SSCs).

On Thursday, February 13—Monkfish Framework 8 will be discussed to approve final measurements to consist of 2014–16 ABC/Annual Catch Target (ACT), Days-at-Sea, and Trip Limits and the northern boundary for Permit Category H vessels.

The Council will hold its regular Business Session to receive Organizational Reports, the New England Council Liaison Report, the Executive Director's Report, Science Report, Committee Reports, and conduct any continuing and/or new business.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens 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 aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: January 21, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014–01418 Filed 1–23–14; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletions

**AGENCY:** Committee for Purchase From People Who are Blind or Severely Disabled.

**ACTION:** Additions to and deletions from the Procurement List.

**SUMMARY:** This action adds products to the Procurement List that will be furnished by the nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products and a service from the Procurement List previously furnished by such agencies.

**DATES:** *Effective Date:* 2/24/2014.

**ADDRESSES:** Committee for Purchase From People Who are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

### FOR FURTHER INFORMATION CONTACT:

Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

### SUPPLEMENTARY INFORMATION:

#### Additions

On 11/8/2013 (78 FR 67129–67130), the Committee for Purchase From People Who are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

### End of Certification

Accordingly, the following products are added to the Procurement List:

#### Products

NSN: 8455–00–NIB–0036—ID Card Holder, Dual Cards, Rigid Plastic, Black, W/Neck Lanyard.

NSN: 8455–00–NIB–0037—ID Card Holder, Dual Cards, Rigid Plastic, Black.

NSN: 8455–00–NIB–0039—Badge Holder, ID, Plastic, Clear, Waterproof W/Neck Lanyard.

NPA: West Texas Lighthouse for the Blind, San Angelo, TX.

*Contracting Activity:* General Services Administration, Fort Worth, TX.

*Coverage:* A-List for the Total Government Requirement as aggregated by the General Services Administration.

### Deletions

On 12/13/2013 (78 FR 75911–75912), the Committee for Purchase from People Who are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service deleted from the Procurement List.



**End of Certification**

Accordingly, the following products and service are deleted from the Procurement List:

**Products**

NSN: 7520-01-455-7236—Pen, Ballpoint, Stick Type, Recycled.  
 NPA: West Texas Lighthouse for the Blind, San Angelo, TX.  
*Contracting Activity:* General Services Administration, New York, NY.  
 NSN: 8955-01-E61-3689—Coffee, Roasted, Ground, 39 oz. bag.  
 NPA: CW Resources, Inc., New Britain, CT.

*Contracting Activity:* Defense Logistics Agency Troop Support, Philadelphia, PA.

Tree Marking Paint and Tracer Element (16 oz. Bottle)

NSN: 8010-01-273-9343—Zones 8-10.  
 NSN: 8010-01-273-9344—Zones 8-10.  
 NSN: 8010-01-273-9345—Zones 8-10  
 NSN: 8010-01-273-9347—Zones 1-7.  
 NSN: 8010-01-273-9348—Zones 1-7.  
 NSN: 8010-01-274-2560—Zones 8-10.  
 NSN: 8010-01-274-2561—Zones 8-10.

Tree Marking Paint, Water Clean Up

NSN: 8010-01-441-6105—Red.  
 NSN: 8010-01-441-6106—Red.

Tree Marking Paint, Citrus-Base

NSN: 8010-01-483-6494—Blue.  
 NSN: 8010-01-483-6498—Orange.

Tree Marking Paint, Water Resistant

NSN: 8010-01-511-5100—Yellow.  
 NSN: 8010-01-511-5101—Green.  
 NSN: 8010-01-511-5107—White.

Paint, Tree Marking, Solvent Base

NSN: 8010-01-511-5109—Black, 1 Gallon.  
 NPA: The Lighthouse for the Blind, St. Louis, MO.

*Contracting Activity:* General Services Administration, Kansas City, MO.

**Service**

*Service Type/Location:* Janitorial/Custodial Service, U.S. Geological Survey Upper Midwest, Environmental Science Center, 2630 Fanta Reed Road, La Crosse, WI.

NPA: Riverfront Activity Center, Inc., La Crosse, WI.

*Contracting Activity:* Dept. of the Interior, Office of Policy, Management, and Budget, NBC Acquisition Services Division, Washington, DC

**Patricia Briscoe,**

*Deputy Director, Business Operations (Pricing and Information Management).*

[FR Doc. 2014-01419 Filed 1-23-14; 8:45 am]

**BILLING CODE 6353-01-P**

**COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED****Procurement List; Proposed Additions and Deletions**

**AGENCY:** Committee for Purchase From People Who are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add a service and products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and to delete products and a service previously furnished by such agencies.

**DATES:** *Comments must be received on or before: 2/24/2014.*

**ADDRESSES:** Committee for Purchase From People Who are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** Patricia Briscoe, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

**Additions**

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the service and products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service and products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Service**

*Service Type:* Grounds Maintenance.

*Service Location:* Utah Data Center Campus, 11600 Redwood Road, Bluffdale, UT, Camp Williams, UT.

NPA: Community Foundation for the Disabled, Inc.

*Contracting Activity:* National Service Agency, Fort Meade, MD.

**Products**

Plate, Paper, White, Round

NSN: 7350-00-290-0593—6½"

Diameter.

NSN: 7350-00-290-0594—9" Diameter.

NPA: The Lighthouse for the Blind in New Orleans, Inc., New Orleans, LA.

*Contracting Activity:* General Services Administration, Fort Worth, TX.

*Coverage:* A-List for the Total Government Requirement as aggregated by the General Services Administration.

Binder, Round Ring, Rigid Cover

NSN: 7510-00-579-2751—Black, 2" Capacity, 8½" × 11".

NPA: South Texas Lighthouse for the Blind, Corpus Christi, TX.

*Contracting Activity:* General Services Administration, New York, NY.

*Coverage:* B-List for the Broad Government Requirement as aggregated by the General Services Administration.

Tape, Electrical Insulation

NSN: 5970-01-245-7042—Black, 1" w × 108 ft.

NSN: 5970-01-013-9367—White, 3/4" w × 66 ft.

NPA: Cincinnati Association for the Blind, Cincinnati, OH.

*Contracting Activity:* Defense Logistics Agency Aviation, Richmond, VA.

*Coverage:* B-List for the Broad Government Requirement as aggregated by the Defense Logistics Agency Contracting Office, Richmond, VA.

**Deletions**

The following products and service are proposed for deletion from the Procurement List:

**Products**

Kit, Combination Dustpan and Broom

NSN: 7290-00-NIB-0002.

NPA: New York City Industries for the Blind, Inc., Brooklyn, NY.

*Contracting Activity:* Department of Veterans Affairs, NAC, Hines, IL.

Tape, Electronic Data Processing

NSN: 7045-01-115-0502.

NPA: North Central Sight Services, Inc., Williamsport, PA.

*Contracting Activity:* Defense Logistics Agency Troop Support, Philadelphia, PA.

Card, Index

NSN: 7530-00-281-1315—Green.

NPA: Louisiana Association for the Blind, Shreveport, LA.

*Contracting Activity:* General Services Administration, New York, NY.

PURELL/SKILCRAFT Instant Hand Sanitizer Value Pack

NSN: 8520-00-NIB-0109.

NSN: 8520-00-NIB-0110.



PURELL/SKILCRAFT 1200mL  
Anitbacterial Hand Wash Sanitizer  
NSN: 8520-00-NIB-0111.

PURELL/SKILCRAFT-GOJO Instant  
Hand Sanitizer

NSN: 8520-00-NIB-0117—gel.  
NSN: 8520-00-NIB-0120—foam.  
NSN: 8520-00-NIB-0121—gel.  
NPA: Travis Association for the Blind,  
Austin, TX.

*Contracting Activity:* Department Of  
Veterans Affairs, NAC, Hines, IL.

*Service:*

*Service Type/Location:* Carpet  
Replacement, Smithsonian National  
Gallery of Art, 6th & Constitution  
Avenue NW., Washington, DC.

NPA: Unknown.

*Contracting Activity:* National Gallery of  
Arts, Washington, DC.

**Patricia Briscoe,**  
*Deputy Director, Business Operations (Pricing  
and Information Management).*

[FR Doc. 2014-01420 Filed 1-23-14; 8:45 am]

**BILLING CODE 6353-01-P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Raritan Bay and Sandy Hook Bay, New Jersey Feasibility Report for Hurricane and Storm Damage Reduction Union Beach, New Jersey Final Feasibility Report

**AGENCY:** Department of the Army, U.S.  
Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of  
Engineers, New York District (District),  
is preparing a Supplemental  
Environmental Impact Statement (SEIS)  
to ascertain compliance with applicable  
Federal and State environmental laws  
for the authorized Raritan Bay and  
Sandy Hook Bay, New Jersey Feasibility  
Report for Hurricane and Storm Damage  
Reduction Union Beach, New Jersey  
Final Feasibility Report. The study area  
occupies an approximate 1.8 square  
mile area of land along the coast of  
Raritan Bay in the Borough of Union  
Beach, Monmouth County, New Jersey.  
The project was authorized for  
construction in the Water Resources  
Development Act of 2007 (Pub. L. 110-  
114) on November 8, 2007 but has yet  
to be constructed. An EIS for the  
authorized project was finalized in

September 2003. This SEIS will identify  
any changes in the potential social,  
economic, cultural, and environmental  
affects through the implementation of  
the authorized plan since the EIS was  
published.

**ADDRESSES:** U.S. Army Corps of  
Engineers, New York District, Planning  
Division, Environmental Analysis  
Branch, 26 Federal Plaza, Room 2151,  
New York, NY 10278-0090.

**FOR FURTHER INFORMATION CONTACT:**  
Matthew Voisine, Project Biologist,  
[matthew.voisine@usace.army.mil](mailto:matthew.voisine@usace.army.mil) or  
917-790-8718.

#### SUPPLEMENTARY INFORMATION:

1. The area is located in low elevation  
regions with numerous small creeks  
providing drainage. Low-lying  
residential and commercial structures in  
the area experience flooding caused by  
coastal storm inundation. This problem  
has progressively worsened in recent  
years due to loss of protective beaches  
and increased urbanization in the area  
with structures susceptible to flooding  
from rainfall and coastal storm surges,  
erosion and wave attack, combined with  
restrictions to channel flow in the tidal  
creeks. This area was devastated by  
Hurricane Sandy in October 2012. A  
NJDEP Community Affairs Report  
described 1,096 houses and 84 rentals  
with minor damage, 136 houses and 107  
rentals with major damage, and 194  
houses and 88 rentals with severe  
damage in Union Beach as a result of  
Hurricane Sandy.

2. The authorized plan recommends  
the implementation of a storm damage  
reduction project consisting of a  
combination of levee, floodwalls, tide  
gates, pump stations, a dune, and a  
beach berm with terminal groins. The  
project would also construct wetland  
habitat to mitigate for the loss of  
wetlands due to the implementation of  
the recommended plan.

3. The SEIS is will evaluate any  
changes in the project that may be  
necessary due to changes in regulations  
or existing conditions, including natural  
resources and the affects of hurricane  
Sandy. In one such proposed change the  
original authorized plans included the  
use of I-walls, which will need to be  
replaced per USACE Engineering  
Technical Letter (ETL) 1110-2-575,  
Engineering Design Evaluation of I-  
walls. The replacement for I-walls may  
have a larger footprint, potentially  
impacting more resources.

4. It is anticipated that a Draft SEIS is  
will be made available for public review  
in May 2014. Anyone with comments as  
to the scope of the SEIS or information  
that should be included in such

assessment should provide this in  
writing to Mr. Voisine (see **ADDRESSES**).

5. Individuals interested in obtaining  
a copy of the Draft SEIS for review  
should contact Matthew Voisine (see  
**ADDRESSES**).

6. All federal agencies interested in  
participating as a Cooperating Agency  
are requested to submit a letter of intent  
to COL Paul E. Owen, District Engineer,  
U.S. Army Corps of Engineers, 26  
Federal Plaza, Room 2109, New York,  
NY 10278-0090.

Dated: November 21, 2013.

**Frank Santomauro,**  
*Chief, Planning Division.*

[FR Doc. 2014-01443 Filed 1-23-14; 8:45 am]

**BILLING CODE 3720-58-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 13346-003]

#### PayneBridge, LLC; Notice of Availability of Environmental Assessment

In accordance with the National  
Environmental Policy Act of 1969 and  
the Federal Energy Regulatory  
Commission's (Commission or FERC's)  
regulations, 18 Code of Federal  
Regulations (CFR) Part 380 (Order No.  
486, 52 **Federal Register** 47,897), the  
Office of Energy Projects has reviewed  
PayneBridge, LLC's application for an  
original license to construct and operate  
the Williams Dam Water Power Project.  
The proposed 4.0-megawatt project  
would be located on the East Fork White  
River in Lawrence County, Indiana, near  
the town of Williams, at an existing dam  
owned and operated by the Indiana  
Department of Natural Resources. The  
project does not occupy any federal  
land.

Staff prepared an environmental  
assessment (EA), which analyzes the  
potential environmental effects of  
licensing the project and concludes that  
licensing the project, with appropriate  
protective measures, would not  
constitute a major federal action  
significantly affecting the quality of the  
human environment.

A copy of the EA is available for  
review at the Commission in the Public  
Reference Room or may be viewed on  
the Commission's Web site at  
[www.ferc.gov](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 at [FERCOnlineSupport@](mailto:FERCOnlineSupport@)

*ferc.gov* or toll-free number at 1-866-208-3676, or for TTY, 202-502-8659.

You may also register online at [www.ferc.gov/docs-filing/esubscription.asp](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.

Any comments should be filed within 30 days from the date of this notice. The Commission strongly encourages electronic filing. Please file the requested information 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-13346-003.

Please contact Aaron Liberty by telephone at (202) 502-6862 or by email at [aaron.liberty@ferc.gov](mailto:aaron.liberty@ferc.gov), if you have any questions.

Dated: January 16, 2014.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2014-01335 Filed 1-23-14; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Commission or Commission Staff Attendance at MISO Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following MISO-related meetings:

- Advisory Committee (10:00 a.m.–1:00 p.m., Local Time)
  - February 26 (Windsor Court Hotel, 300 Gravier Street, New Orleans, LA)
  - March 26
  - April 23
  - May 21
  - July 23
  - August 27 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - September 24
  - October 22
  - November 19
  - December 10
- Board of Directors Audit & Finance Committee
  - February 26 (Windsor Court Hotel, 300 Gravier Street, New Orleans,

LA)

■ 3:30 p.m.–4:45 p.m.

- April 21 (9:00 a.m.–11:00 a.m.)
- August 27 (St. Paul Hotel, 350 Market St., St. Paul, MN, 2:00 p.m.–3:00 p.m.)
- October 22 (3:30 p.m.–5:00 p.m.)
- November 19 (10:30 a.m.–12:30 a.m.)
- Board of Directors (8:30 a.m.–10:00 a.m., Local Time)
  - February 27 (Windsor Court Hotel, 300 Gravier Street, New Orleans, LA)
  - April 24
  - June 19 (Ritz-Carlton, 100 Carondelet Plaza, St. Louis, MO)
  - August 28 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - October 23
  - December 11
- Board of Directors Markets Committee (8:00 a.m.–10:00 a.m., Local Time)
  - January 29
  - February 26 (Windsor Court Hotel, 300 Gravier Street, New Orleans, LA)
  - March 26
  - April 23
  - May 28
  - June 18 (Ritz-Carlton, 100 Carondelet Plaza, St. Louis, MO)
  - July 23
  - August 27 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - September 23
  - October 22
  - November 19
  - December 10
- Board of Directors System Planning Committee
  - February 19 (11:00 a.m.–12:30 p.m.) (Windsor Court Hotel, 300 Gravier Street, New Orleans, LA)
  - April 23 (3:30 p.m.–5:15 p.m.)
  - June 17 (9:00 a.m.–11:00 a.m.) (Ritz-Carlton, 100 Carondelet Plaza, St. Louis, MO)
  - August 26 (4:00 p.m.–6:00 p.m.) (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - October 15 (11:00 a.m.–12:30 p.m.)
  - November 19 (2:00 p.m.–4:00 p.m.)
  - December 10 (3:30–5:30 p.m.)
- MISO Informational Forum (3:00 p.m.–5:00 p.m., Local Time)
  - February 25 (Windsor Court Hotel, 300 Gravier Street, New Orleans, LA)
  - March 25
  - April 22
  - May 20
  - July 22
  - August 26 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - September 23
  - October 21
  - November 18
  - December 6

- MISO Market Subcommittee (9:00 a.m.–4:00 p.m., Local Time)
  - February 4
  - March 4
  - April 1
  - April 29
  - June 3
  - July 8 (2985 Ames Crossing Road, Eagan, MN)
  - August 5
  - September 2
  - September 30
  - October 28
  - December 2
- MISO Supply Adequacy Working Group (9:00 a.m.–5:00 p.m., Local Time)
  - February 6
  - March 6
  - April 3
  - May 1
  - June 5
  - July 10
  - August 7
  - September 4
  - October 2
  - October 30
  - December 4
- MISO Regional Expansion Criteria and Benefits Task Force (9:00 a.m.–5:00 p.m., Local Time)
  - January 30
  - February 20
  - March 20
  - April 17
  - May 15
  - June 26
  - July 31
  - August 21
  - September 18
  - October 16
  - November 13
  - December 18
- MISO Planning Advisory Committee (9:00 a.m.–5:00 p.m., Local Time)
  - January 29
  - February 19
  - March 19
  - April 16
  - May 14
  - June 25
  - July 30
  - August 20
  - September 17
  - October 15
  - November 12
  - December 17

Except as noted, all of the meetings above will be held at: MISO Headquarters, 701 City Center Drive, 720 City Center Drive, and Carmel, IN 46032.

Further information may be found at [www.misoenergy.org](http://www.misoenergy.org).

The above-referenced meetings are open to the public.

The discussions at each of the meetings described above may address matters at issue in the following proceedings:

- Docket Nos. ER04–691, EL04–104 and ER04–106, *et al.*, *Midwest Independent Transmission System Operator, Inc., et al.*
- Order No. 890, *Preventing Undue Discrimination and Preference in Transmission Service*
- Docket Nos. ER06–18, *et al.*, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER09–1431, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER10–1791, *Midwest Independent Transmission System Operator, Inc. and the Midwest ISO Transmission Owners*
- Docket No. ER10–2283, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. RM10–23 and Order No. 1000, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*
- Docket No. ER11–2275, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER11–3279, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER11–4081, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER12–678, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER12–2302, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER12–2706, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. EL13–13, *ITC Midwest, LLC*
- Docket No. ER13–187, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER13–186, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER13–101, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER13–89, *MidAmerican Energy Company*
- Docket No. ER12–1266, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER12–1265, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER12–1564, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER12–1194, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER12–971, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER08–925, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER12–309, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER12–480, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER12–2682, *Midwest Independent Transmission System Operator, Inc.*
- Docket No. ER13–984, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–1923, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–1695, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–1924, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–1943, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–1944, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–1945, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–692, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–2156, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–2375, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–2376, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–2379, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–862, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–859, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–2233, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–836, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–801, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–790, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–503, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–721, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–706, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–684, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–705, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–698, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–689, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–684, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–681, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–659, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–649, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–421, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–422, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–624, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–256, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–2124, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–102, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–2295, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–603, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–114, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–115, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–2378, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER13–2337, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–542, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–170, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–516, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–206, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–202, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–83, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–960, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–698, *Midcontinent Independent System Operator, Inc.*
- Docket No. EL13–88, *Northern Indiana Public Service Corp. v Midcontinent Independent System Operator, Inc., et al.*
- Docket No. EL14–12, *ABATE et al. v Midcontinent Independent System Operator, Inc., et al.*
- Docket No. AD12–16, *Capacity Deliverability across the MISO/PJM Seam*
- Docket No. AD14–3, *Coordination of Energy and Capacity across the MISO/PJM Seam*
- Docket No. ER13–1938, *Midcontinent Independent System Operator, Inc.*
- Docket No. ER14–990, *Midcontinent Independent System Operator, Inc.*

For more information, contact Patrick Clarey, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or [patrick.clarey@ferc.gov](mailto:patrick.clarey@ferc.gov), or Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or [christopher.miller@ferc.gov](mailto:christopher.miller@ferc.gov).

Dated: January 16, 2014.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014-01334 Filed 1-23-14; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Supplemental Notice

|                                                                                     | Docket Nos.   |
|-------------------------------------------------------------------------------------|---------------|
| Filing Requirements for Electric Utility S.A.                                       | RM01-8-000    |
| Electricity Market Transparency Provisions of Section 220 of the Federal Power Act. | RM10-12-000   |
| Revisions to Electric Quarterly Report Filing Process.                              | RM12-3-000    |
| Revised Public Utility Filing Requirements for Electric Quarterly Reports.          | ER02-2001-000 |

Take notice that on December 20, 2013, the Commission issued a notice of technical conference on the Revisions to Electric Quarterly Report (EQR) Filing Process. The conference will take place on Wednesday, January 22, 2014 from 10:00 a.m. to 1:00 p.m. (EST), in the Commission Meeting Room at 888 First Street NE., Washington, DC 20426. The public may attend.

This supplemental notice is to clarify logistics for this event. Participants, either attending in person or on the webcast, are encouraged to preregister at <https://www.ferc.gov/whats-new/registration/eqr-01-22-14-form.asp>. There will be no teleconference available as mentioned in the initial notice. However, webcasting provides audio service and is archived. Participants may submit questions before or during the event via email to: [eqr@ferc.gov](mailto:eqr@ferc.gov). Please specify "EQR Questions for Jan 22 Conference" in the subject line or your emails.

This meeting/conference will be transcribed. Transcripts of the meeting/conference will be immediately available for a fee from Ace-Federal Reporters, Inc. (202-347-3700 or 1-800-336-6646). A free webcast of the meeting/conference is also available through [www.ferc.gov](http://www.ferc.gov). Anyone with Internet access who desires to listen to this event can do so by navigating to [www.ferc.gov](http://www.ferc.gov)'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts and offers the option of listening to the

meeting via phone-bridge for a fee. If you have any questions, visit [www.CapitolConnection.org](http://www.CapitolConnection.org) or call 703-993-3100.

Any additional information regarding the agenda for the technical conference will be posted prior to the conference on the Calendar of Events on the Commission's Web site, [www.ferc.gov](http://www.ferc.gov).

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 202-208-1659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

For more information about the technical conference, please contact: Sarah McKinley, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8368, [sarah.mckinley@ferc.gov](mailto:sarah.mckinley@ferc.gov).

Dated: January 16, 2014.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014-01336 Filed 1-23-14; 8:45 am]

**BILLING CODE 6717-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9013-2]

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-7146 or <http://www.epa.gov/compliance/nepa/>.

### Weekly receipt of Environmental Impact Statements Filed 01/13/2014 Through 01/17/2014 Pursuant to 40 CFR 1506.9.

#### Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <http://www.epa.gov/compliance/nepa/eisdata.html>

EIS No. 20140012, Draft EIS, HHS, GA, Centers for Disease Control and Prevention Roybal Campus 2015-2025 Master Plan, Comment Period Ends: 03/10/2014, Contact: George Chandler 404-245-2763

EIS No. 20140013, Third Final Supplement, USACE, NM, Rio Grande Floodway, San Acacia to Bosque del Apache Unit, Review Period Ends: 02/24/2014, Contact: Jerry Nieto 505-342-3362

EIS No. 20140014, Second Draft EIS (Tiering), FHWA, IL, Illiana Corridor Project Tier Two Transportation System Improvements, Comment Period Ends: 03/10/2014, Contact: Catherine A. Batey 217-492-4600

EIS No. 20140015, Final EIS, NPS, WY, Remote Vaccination Program to Reduce the Prevalence of Brucellosis in Yellowstone Bison, Review Period Ends: 02/24/2014, Contact: Jennifer Carpenter 307-344-2528

EIS No. 20140016, Draft EIS, USFWS, OH, Ballville Dam Project, Comment Period Ends: 03/26/2014, Contact: Brian Elkington 612-713-5168

EIS No. 20140017, Final EIS, USMC, CA, LEGISLATIVE—Renewal of the Chocolate Mountain Aerial Gunnery Range Land Withdrawal, Review Period Ends: 02/24/2014, Contact: Ms. Kelly Finn 619-532-4452

EIS No. 20140018, Draft EIS, USN, WA, Northwest Training and Testing, Comment Period Ends: 03/25/2014, Contact: John Mosher 360-257-3234

Dated: January 21, 2014.

**Dawn Roberts,**

*Management Analyst, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2014-01422 Filed 1-23-14; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2013-0776; FRL-9904-66]

### Nominations to the FIFRA Scientific Advisory Panel; Request for Comments

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

**ACTION:** Notice.

**SUMMARY:** This notice provides the names, addresses, professional affiliations, and selected biographical data of persons recently nominated to serve on the Scientific Advisory Panel (SAP) established under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Agency, at this time, anticipates selecting two new FIFRA SAP members to serve, as a result of membership terms that expire in 2014. Public comments on the current nominations are invited. These comments will be used to assist the Agency in selecting the new FIFRA SAP members.

**DATES:** Comments, identified by docket identification (ID) number EPA-HQ-OPP-2013-0776, must be received on or before February 10, 2014.

**ADDRESSES:** Submit your comments, identified by docket ID number EPA-

HQ-OPP-2013-0776, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

**FOR FURTHER INFORMATION CONTACT:** Fred Jenkins, Designated Federal Officer (DFO), Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (202) 564-3327; fax number: (202) 564-8382; email address: [jenkins.fred@epa.gov](mailto:jenkins.fred@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

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

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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

When submitting comments, remember to:

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

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

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

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

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

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

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

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

##### II. Background

The FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information, and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. The FIFRA SAP is a Federal advisory committee, established in 1975 under FIFRA, that operates in accordance with requirements of the Federal Advisory Committee Act (FACA). The FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Deputy Administrator from nominees provided by the National Institutes of Health (NIH) and the National Science Foundation (NSF). FIFRA, as amended by the Food Quality and Protection Act (FQPA), established a Science Review Board consisting of at least 60 scientists who are available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP. As a peer review mechanism, the FIFRA SAP provides comments, evaluations, and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of the FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

The Agency, at this time, anticipates selecting two new members to serve on the panel as a result of membership terms that expire in 2014. The Agency requested nominations of experts in the fields of human toxicology, environmental toxicology, pathology, risk assessment, and/or environmental biology with demonstrated experience and expertise in all phases of the risk assessment process including: Planning, scoping, and problem formulation; analysis; and interpretation and risk characterization (including the interpretation and communication of uncertainty). Nominees should be well published and current in their field of expertise. FIFRA stipulates that we publish the name, address, and

professional affiliation of the nominees in the **Federal Register**.

##### III. Charter

A Charter for the FIFRA SAP, dated October 19, 2012, was issued in accordance with the requirements of FACA (5 U.S.C. App. I).

###### A. Qualifications of Members

FIFRA SAP members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact of pesticides on health and the environment. No persons shall be ineligible to serve on FIFRA SAP by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except EPA). The EPA Deputy Administrator appoints individuals to serve on FIFRA SAP for staggered terms of 3 years. FIFRA SAP members are subject to all ethics requirements applicable to Special Government Employees, which include rules regarding conflicts of interest. Each nominee selected by the EPA Deputy Administrator, before being formally appointed, is required to submit a confidential statement of employment and financial interests, which shall fully disclose, among other financial interests, the nominee's sources of research support, if any.

In accordance with FIFRA section 25(d)(1), all nominees considered for appointment to FIFRA SAP shall furnish information concerning their professional qualifications, educational background, employment history, and scientific publications.

###### B. Applicability of Existing Regulations

With respect to the requirements of FIFRA section 25(d) that the EPA Administrator promulgate regulations regarding conflicts of interest, EPA's existing ethics regulations applicable to Special Government Employees, which include advisory committee members, will apply to the members of FIFRA SAP.

###### C. Process of Obtaining Nominees

In accordance with FIFRA section 25(d), EPA, on September 27, 2013, requested that NIH and NSF nominate scientists to fill vacancies occurring on FIFRA SAP. The Agency requested nominations of experts in the fields of human toxicology, environmental toxicology, pathology, risk assessment, and/or environmental biology with demonstrated experience and expertise in all phases of the risk assessment

process including: Planning, scoping, and problem formulation; analysis; and interpretation and risk characterization (including the interpretation and communication of uncertainty). NIH and NSF responded by letter, providing the Agency with a total of 21 nominees. Copies of these letters, with the listed nominees, are available in the docket at docket ID number EPA-HQ-OPP-2013-0776. Of the 21 nominees, 10 are interested and available to actively participate in FIFRA SAP meetings (see Unit IV.). In addition to the current nominees interested, at EPA's discretion, nominees who were interested and available during the previous nomination process (see the **Federal Register** of July 29, 2011 (76 FR 45555) (FRL-8882-2) may also be considered. Of the current 21 nominations, the following 11 individuals are not available:

1. Asa Bradman, Ph.D., University of California—Berkeley, Berkeley, CA.
2. Aaron Blair, Ph.D., National Cancer Institute, Bethesda, MD.
3. William Bradshaw, Ph.D., University of Oregon, Eugene, OR.
4. Carlos Davidson, Ph.D., San Francisco State University, San Francisco, CA.
5. Vincent Hand, Ph.D., HandCompass Consulting LLC, Oxford, OH.
6. Lawrence M. Hanks, Ph.D., University of Illinois at Urbana—Champaign, Urbana, IL.
7. Charles Lynch, M.D., University of Iowa, Iowa City, IA.
8. Thomas A.E. Platts-Mills, M.D., University of Virginia, Charlottesville, VA.
9. Alvaro Puga, Ph.D., University of Cincinnati, College of Medicine, Cincinnati, OH.
10. Theodore Slotkin, Ph.D., Duke University School of Medicine, Durham, NC.
11. Rick Relyea, Ph.D., University of Pittsburgh, Pittsburgh, PA.

#### IV. Nominees

Following are the names, addresses, professional affiliations, and selected biographical data of current nominees being considered for membership on the FIFRA SAP. The Agency anticipates selecting two individuals to fill vacancies occurring in 2014.

1. Dana Boyd Barr, Ph.D., Emory University, Atlanta, GA—i. *Expertise*: Exposure science and environmental health.
- ii. *Education*: B.S. in Biology from Brenau College and Ph.D. in Analytical Chemistry from Georgia State University.
- iii. *Professional Experience*: Dr. Barr is a Professor of Exposure Science and

Environmental Health at Emory University's Rollins School of Public Health, Department of Environmental Health. Although she has been in academia for just 3 years, she has worked to successfully establish a team of cohort studies evaluating maternal-child health, paternal reproductive health, and farmworker safety in Thailand. She is also collaborating on several child and farmworker cohorts in the United States. In addition, she just received funding to evaluate brominated flame retardant exposures and thyroid function in small children. Prior to joining Emory, Dr. Barr was employed at the Centers for Disease Control and Prevention (CDC) for 23 years. During her tenure at CDC, she devoted much of her time to the development of methods for assessing human exposure to a variety of environmental toxicants including current-use pesticides, phthalates, organochlorine chemicals (pesticides and polychlorinated biphenyls (PCBs)), phytoestrogens, diethylene glycol, methyl eugenol, vinyl chloride, and others. Dr. Barr has authored or coauthored over 300 peer-reviewed publications, book chapters, and many published abstracts. Some of these papers have been landmark papers showing human exposure to pesticides in the general population and determining appropriate matrices for biomonitoring at each life stage. She is the past President of the International Society of Exposure Science (ISES; formerly ISEA) and previously served as its Treasurer; she just completed a 5-year term as Editor-in-Chief of ISES's official journal, *Journal of Exposure Science and Environmental Epidemiology*. She is also an Associate Editor of *Environmental Health Perspectives* and serves on the editorial board of the *Journal of Chromatography & Separation Techniques*, *Journal of Health Research*, and *Advances in Medicine*. She is also an active member of the International Society of Environmental Epidemiology, Society of Toxicology, American Chemical Society, American Society for Mass Spectrometry, and the Association of Official Analytical Chemists. She has served many important roles in the field of exposure assessment including serving on EPA review boards such as the FIFRA SAP, chairing and co-chairing sessions at international and domestic meetings, serving on the National Children's Study Working Group for chemical exposures, serving as an international expert in pesticide methodology and exposure assessment, serving on the German Research Foundation's Committee for

Standardizing Analytical Methods for Occupational and Environmental Chemistry, and serving on International Life Sciences Institute/Health and Environmental Sciences Institute's steering and technical committees for the Integration of Biomonitoring Data into Risk Assessment. As a result of her efforts, Dr. Barr has received many awards including International Society of Exposure Science's Daisey Award for Outstanding Investigator, two Health and Human Services Secretary's awards for exposure-health investigations involving diethylene glycol and methyl parathion poisoning, 2004 Federal Scientific Employee of the Year, CDC's Mackel Award for outstanding collaboration among epidemiology and laboratory, and EPA's Silver Medal for outstanding contributions to the development of protocols for the National Children's Study.

2. Paul D. Blanc, M.D., University of California San Francisco (UCSF), San Francisco, CA—i. *Expertise*: Occupational and environmental medicine.

ii. *Education*: B.A. from Goddard College, M.S. in Public Health from Harvard School of Public Health, and M.D. from Albert Einstein College of Medicine.

iii. *Professional Experience*: Dr. Blanc, is Professor of Medicine and holds the Endowed Chair in Occupational and Environmental Medicine at UCSF, where he has been on the faculty since 1988. He received his B.A. from Goddard College, where he first became interested in health and the environment, later training at the Harvard School of Public Health (in industrial hygiene), the Albert Einstein School of Medicine, and Cook County Hospital (in a joint Occupational Medicine and Internal Medicine Residency). He was a Robert Wood Johnson Clinical Scholar at UCSF from 1985–1987 and a Fulbright Senior Research Scholar at the Ben Gurion University of the Negev in 1987–1988. He has been a resident scholar at the Rockefeller Bellagio Center (Bellagio, Italy) and the American Academy in Rome. In 2011, he was elected as a fellow of the Collegium Ramazzini, an international honorific society of occupational health leaders. In 2013–2014 he is a Mellon Fellow at the Center for Advanced Studies in the Behavioral Sciences at Stanford University. He has authored numerous scholarly publications in his field and is also the author of “How Everyday Products Make People Sick” (University of California Press, 2009). He posts a blog, Household Hazards, hosted by the journal, *Psychology Today* (<http://>

[www.psychologytoday.com/blog/household-hazards](http://www.psychologytoday.com/blog/household-hazards)).

3. Rachel M. Bowden, Ph.D., Illinois State University, Normal, IL—i.

*Expertise:* Ecological Physiology and Endocrinology

ii. *Education:* B.A. in Environmental, Population & Organismal Biology from University of Colorado-Boulder and Ph.D. in Evolution, Ecology and Behavior from Indiana University-Bloomington.

iii. *Professional Experience:* Dr. Bowden is currently a Professor in the School of Biological Sciences at Illinois State University. She has received broad training in the biological sciences, but her specific expertise is in ecological physiology with a focus on endocrinology. She has been interested in maternal resource provisioning to offspring, particularly yolk steroids and the consequences of those maternal resources on offspring, for nearly 20 years. Her research has evolved from simply documenting patterns related to yolk steroids to trying to understand how, mechanistically, embryos respond to and cope with the presence of exogenous, biologically active agents during development. More recently, her research group has been working with bisphenol-A. Their interest in this compound lies in its ability to induce estrogen-like properties, and they are currently examining the effects of exposure to bisphenol-A during early development using the red-eared slider turtle (*Trachemys scripta*) as a model system.

4. Richard Thomas Di Giulio, Ph.D., Duke University, Durham, NC—i.

*Expertise:* Environmental toxicology.

ii. *Education:* B.A. in Comparative Literature from University of Texas at Austin, M.S. in Wildlife Biology from Louisiana State University, and Ph.D. in Environmental Toxicology from Virginia Polytechnic Institute and State University.

iii. *Professional Experience:* Dr. Di Giulio is Professor of Environmental Toxicology in the Nicholas School of the Environment at Duke University where he also serves as Director of the Integrated Toxicology and Environmental Health Program, Director of the Superfund Research Center, and Co-Principal Investigator for the Center for the Environmental Implications of Nanotechnology. Dr. Di Giulio has published extensively on subjects including biochemical and molecular mechanisms of adaptation and toxicity, biomarkers for chemical exposure and toxicity, and effects of chemical mixtures and multiple stressors. His current work focuses on mechanisms by which polycyclic aromatic

hydrocarbons (PAHs) and nanomaterials perturb embryonic development in fish models (zebrafish and killifish), the evolutionary consequences of hydrocarbon pollution on fish populations, and the ecological and human health impacts of mountaintop coal mining in Appalachia.

Additionally, he has organized symposia and workshops, and written on the broader subject of interconnections between human health and ecological integrity. Dr. Di Giulio serves as an advisor for the Science Advisory Board of EPA, is a member of the Scientific Advisory Board, U.S. Department of Defense, Strategic Environmental Research and Development Program, is Associate Editor for *Environmental Health Perspectives*, and recently served on the National Academy of Science Committee on Exposure Assessment in the 21st Century. He is an active member of the Society of Environmental Toxicology and Chemistry (SETAC), where he previously served on the Board of Directors, and the Society of Toxicology (SOT).

5. Hilary Godwin, Ph.D., University of California at Los Angeles (UCLA), Los Angeles, CA—i. *Expertise:* Chemistry and environmental health.

ii. *Education:* B.S. in Chemistry from University of Chicago; Ph.D. in Physical Chemistry from Stanford University.

iii. *Professional Experience:* Professor Godwin joined the UCLA faculty in 2006 and is currently a Professor in the Environmental Health Sciences Department and in the Institute of the Environment and Sustainability. She conducted postdoctoral research from 1994–1996 at the Johns Hopkins University School of Medicine in the Department of Biophysics and Biophysical Chemistry, where she was a National Institutes of Health postdoctoral fellow. Prior to joining the faculty at UCLA, Dr. Godwin was on the faculty of the Department of Chemistry at Northwestern University, where she was an Assistant Professor (1996–2000), Associate Professor (2000–2006), Associate Chair (2003–2004), and Chair (2004–2006) of Chemistry. She has served as Chair of the Department of Environmental Health Sciences (2007–2008) and Associate Dean for Academic Programs (2008–2011) in the School of Public Health at UCLA as well as Faculty Director for the Global Bio Lab at UCLA (2009–2011 and 2013–present). Dr. Godwin has received several awards, including a Camille Dreyfus Teacher-Scholar Award, an Alfred P. Sloan Research Fellowship, a National Science Foundation CAREER Award, a Burroughs Wellcome Fund Toxicology

New Investigator Award, and a Camille and Henry Dreyfus New Faculty Award. She was a Howard Hughes Medical Institute Professor from 2002–2006 and was elected as a fellow of the American Association for the Advancement of Science in 2009. Dr. Godwin is a Lusk Scholar and is coPI and Director for Education and Outreach Activities for the University of California Center for Environmental Implications of Nanotechnology. Dr. Godwin's research focuses on elucidating the molecular toxicology of engineered nanomaterials and development of assays for detection and analysis of infectious diseases. She collaborates with Professor Tim Malloy in the UCLA School of Law on the development and analysis of new approaches to nanoregulatory policy and assessment of alternatives for hazardous substances. She also works actively with local organizations and community groups to prepare for and diminish the impact of climate change on public health.

6. Jane A. Hoppin, Sc.D., North Carolina State University (NCSU), Raleigh, NC—i. *Expertise:* Environmental health and epidemiology.

ii. *Education:* B.S. in Environmental Toxicology from University of California, Davis; M.S. in Environmental Health Sciences and Sc.D. in Environmental Health and Epidemiology from Harvard School of Public Health.

iii. *Professional Experience:* Dr. Hoppin is an Associate Professor in the Department of Biological Sciences and Deputy Director of the Center for Human Health and the Environment at NCSU. Dr. Hoppin's research focuses on the human health effects of pesticides and other agricultural exposures. Prior to joining NCSU in August 2013, Dr. Hoppin was a Staff Scientist at the National Institute of Environmental Health Sciences (NIEHS) where she was one of the principal investigators of the Agricultural Health Study, a federally funded prospective study of farmers and their spouses in North Carolina and Iowa. During her tenure at NIEHS, Dr. Hoppin focused her research on the adult respiratory health effects of pesticides and other agricultural exposures. In 2010, she was awarded the NIEHS Staff Scientist of the Year award. Dr. Hoppin has published over 170 peer reviewed publications in the field of environmental health and epidemiology. Dr. Hoppin has served on the editorial boards of the *American Journal of Epidemiology* and the *Journal of Occupational Medicine and Toxicology*; in 2010, she guest edited a special edition of *International Journal*



of *Environmental Research and Public Health* focused on pesticides and health. Dr. Hoppin also focuses on the respiratory and allergic health effects of phthalates and the related exposure assessment issues.

7. David Alan Jett, Ph.D., National Institutes of Health (NIH), Bethesda, MD—i. *Expertise*: Neuropharmacology and toxicology.

ii. *Education*: B.A. in Biology from Hampton Institute; M.S. in Zoology/Toxicology from University of Maryland; and Ph.D. in Neuropharmacology and Toxicology from University of Maryland School of Medicine.

iii. *Professional Experience*: Dr. Jett is a Program Director at the National Institute of Neurological Disorders and Stroke (NINDS) where he directs the NIH Countermeasures Against Chemical Threats (CounterACT) Program designed to develop new drugs and diagnostic tools for treating victims of chemical exposures during an emergency, among other duties. Dr. Jett conducted postdoctoral research and subsequently joined the faculty at Johns Hopkins University's Bloomberg School of Public Health Department of Environmental Health Sciences where he conducted research as a university professor for several years. Dr. Jett's scientific interest is in the impact of pesticides on nervous system function, including the molecular and cellular mechanisms of cognitive and neural development. Specifically, he has expertise and experience with organophosphorus pesticides and nerve agents, and the heavy metal lead. Dr. Jett's other interests at NINDS are programs designed to increase diversity in the neuroscience research workforce, and translational research programs.

8. Kurunthachalam Kannan, Ph.D., New York State Department of Health, Albany, NY and State University of New York at Albany, NY—i. *Expertise*: Environmental chemistry and ecotoxicology.

ii. *Education*: B.S. in Agricultural Sciences and M.S. in Agricultural Microbiology from Tamil Nadu Agricultural University; M.S. and Ph.D. in Environmental Chemistry and Ecotoxicology from Ehime University.

iii. *Professional Experience*: Dr. Kannan is a Research Scientist at Wadsworth Center, New York State Department of Health in Albany, NY, where he is Chief of the Organic Analytical Laboratory at the Center. He also holds a joint appointment as a Professor at the Department of Environmental Health Sciences, School of Public Health, State University of New York at Albany. He also holds

visiting professorships at Ehime University, Japan and Harbin Institute of Technology and Nankai University, China. Dr. Kannan's research is focused on environmental distribution, bioaccumulation, human exposure, food contamination, and fate of toxicants. His current research interests are in understanding human exposure to environmental toxicants including pesticides and health effects associated with such exposures. Dr. Kannan has published more than 400 research articles in peer-reviewed journals, 20 book chapters, and edited a book. Dr. Kannan is one of the top 10 most highly cited researchers (ISI (Highly Cited)) in ecology/environment in the world. He is ranked top two globally on the list of Thompson ISI's most highly cited researchers in environment/ecology domain. Dr. Kannan is a recipient of several international awards and honors throughout his career and to name a few, Governor's Gold Medal in 1986 and Society of Environmental Toxicology and Chemistry's Weston F. Roy Environmental Chemistry award in 1999. Dr. Kannan is the Editor-in-Chief of *Ecotoxicology and Environmental Safety* and serves as an Associate Editor of several professional journals and on the editorial board of several international journals. Dr. Kannan is a recipient of Super Reviewer Award for his scholarly and timely reviews of manuscripts submitted to *Environmental Science and Technology*, the American Chemical Society journal. He is a frequent reviewer of research proposals submitted for funding agencies in several countries throughout the world. Dr. Kannan has mentored more than 10 masters and doctoral level students and advised more than 20 postdoctoral research associates in his laboratory. He secured more than \$15 million in research grants in the past 10 years.

9. Coby Schal, Ph.D., North Carolina State University (NCSU), Raleigh, NC—i. *Expertise*: Entomology.

ii. *Education*: B.S. in Biology from State University of New York at Albany; Ph.D. in Entomology from University of Kansas.

iii. *Professional Experience*: Dr. Schal is the Blanton J. Whitmire Distinguished Professor of Structural Pest Management at NCSU, where he is also co-founder and member of the Executive Committee of the W. M. Keck Center for Behavioral Biology and member of the Agromedicine Institute and the Genetics Graduate Program. Between 1984–1993, he was Assistant and Associate Professor and Extension Specialist of Urban Entomology at Rutgers University, NJ. He is a leading authority

on cockroach and bed bug behavior, chemical ecology, physiology, toxicology, biochemistry, and molecular biology. His research has resulted in publications, patents, and tools for pest management. His research on chemical ecology has delineated pheromone-mediated communication in cockroaches, oviposition attractants in mosquitoes, and the evolution of pheromone communication in moths. His team also characterized the role that juvenile hormone plays in regulating sexual behavior and sexual maturation in insects and studies the function and regulation of cuticular waxes in various insects. Research in urban entomology in the last decade has concentrated on the biology of cockroach-produced allergens and intervention strategies to mitigate their pervasiveness in the indoor environment; profiles and mechanisms of insecticide resistance that form the basis for recommendations to the pest control industry; optimization of bait delivery systems, developing and testing repellents against urban pests, and assessing the impact of these approaches on pest behavior, humans, and the environment; and practical integrated solutions (IPM) to cockroach problems in livestock production facilities that emphasize reduced-risk approaches. Dr. Schal's research has been funded by EPA, U.S. Department of Housing and Urban Development (HUD), National Institutes of Health (NIH), National Science Foundation (NSF), U.S. Department of Agriculture (USDA), private foundations and industry and he has published over 230 peer-reviewed papers. He has served as subject editor of the *Journal of Economic Entomology* and *Pest Management Science*, and on the editorial boards of *Archives of Insect Biochemistry and Physiology*, *Journal of Chemical Ecology*, *Journal of Insect Science*, and *Psyche*. He also served on several EPA and NSF panels and as panelist and panel manager for USDA grants panels, and has been an active volunteer with the Entomological Society of America, the Entomological Foundation, and the International Society of Chemical Ecology. He has mentored 28 graduate students and 32 postdoctoral researchers, as well as high school and undergraduate students. Dr. Schal teaches a graduate course in insect behavior, graduate seminars in urban entomology and chemical ecology, and contributes to a team-taught professional development course and insect physiology course. Recent honors include Lifetime Honorary Membership in the North Carolina Pest Management Association, Distinguished



Achievement Award in Urban Entomology from the National Conference on Urban Entomology, elected Fellow of the Entomological Society of America, elected Fellow of the American Association for the Advancement of Science, NCSU's Research Friend of Extension Award, NCSU's Alumni Association Outstanding Research Award, the 2011 Silverstein-Simeone Award from the International Society for Chemical Ecology, and a Distinguished Member of Sigma Xi.

10. Judith Zelikoff, Ph.D., New York University School of Medicine, Tuxedo, NY—i. *Expertise*: Toxicology.

ii. *Education*: B.S. in Biology from Upsala College, M.S. in Microbiology from Farleigh Dickinson University, and Ph.D. in Experimental Pathology from University of Medicine and Dentistry of New Jersey—New Jersey Medical School.

iii. *Professional Experience*: Dr. Zelikoff, a tenured full professor and Principal Investigator, has more than 25 years experience using animal models for assessing the toxicology of inhaled pollutants including metals, nanomaterials, and pollution mixtures from combustible tobacco products, as well as that from wood burning and diesel exhaust. Recently, studies in her laboratory have focused on the fetal basis of adult disease associated with prenatal exposure of mice to inhaled nanomaterials, ambient particulate matter (PM), and cigarette smoke (CS). Results from the cigarette smoke publications demonstrated that in utero exposure to a maternal dose of CS equivalent to smoking <1 pack of cigarettes/day increases risk factors in the offspring associated with cardiovascular disease, asthma, immune dysfunction, and attention-deficit hyperactivity disorder later in life and in a sex-dependent manner. Her tobacco studies have recently been extended to examine toxicity of smokeless tobacco (ST) using a mouse model of oral mucosal exposure, as well as toxicity of smoke from e-cigarettes and hookah. Studies with ST, like those with CS, examined the reproductive/developmental, immunological, cardiovascular, renal, and neurological/behavioral effects of repeated exposure during pregnancy. Earlier in her career, Dr. Zelikoff focused on environmental toxicology and published a significant number of papers on the toxicity of metals and pesticides on different fish species. Many of these publications were used to help inform policy and set regulations. In addition, immune biomarkers of effects, developed in these same fish species, were also used

as indicators of aquatic pollution and efficacy of remediation. Dr. Zelikoff also has extensive experience as a scientific leader which is reflected by her many leadership roles. She currently serves on the Executive Board of the Society of Toxicology (SOT, 8,000 member society) as Council Secretary and previously as president of both the Metals and Immunotoxicology Society of Toxicology Specialty Sections where she received a Lifetime Achievement Award. In addition, she served as a full member on two National Institute of Environmental Health Sciences (NIEHS) Study Sections and continues to serve as an ad hoc member for numerous NIH Special Emphasis Panels where she has also served as Chair. Currently, she is an editorial board member for *Environmental Health Perspectives* and serves as Associate Editor on numerous toxicological journals. As the New York University NIEHS Center Outreach Director, Dr. Zelikoff has led numerous community-guided and enrichment initiatives that have served to set public policy and improve public health by better informing local communities of the latest knowledge in environmental health.

#### List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pests.

Dated: January 8, 2014.

**David J. Dix,**

*Director, Office of Science Coordination and Policy.*

[FR Doc. 2014–01367 Filed 1–23–14; 8:45 am]

**BILLING CODE 6560–50–P**

### FEDERAL DEPOSIT INSURANCE CORPORATION

#### Sunshine Act Meetings

Pursuant to the provisions of the “Government in the Sunshine Act” (5 U.S.C. 552b), notice is hereby given that at 10 a.m. on Tuesday, January 21, 2014, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of

the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the “Government in the Sunshine Act” (5 U.S.C. §§ 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: January 22, 2014.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2014–01447 Filed 1–22–14; 4:15 pm]

**BILLING CODE P**

### FEDERAL ELECTION COMMISSION

#### Sunshine Act Meetings

**AGENCY:** Federal Election Commission.

**DATE & TIME:** Tuesday January 28, 2014 at 10 a.m.

**PLACE:** 999 E Street NW., Washington, DC

**STATUS:** This meeting will be closed to the public.

#### ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Matters concerning participation in civil actions or proceedings or arbitration. Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

\* \* \* \* \*

#### PERSON TO CONTACT FOR INFORMATION:

Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shelley Garr,**

*Deputy Secretary of the Commission.*

[FR Doc. 2014–01464 Filed 1–22–14; 4:15 pm]

**BILLING CODE 6715–01–P**

### FEDERAL MARITIME COMMISSION

#### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in

the **Federal Register**. Copies of the agreements are available through the Commission's Web site ([www.fmc.gov](http://www.fmc.gov)) or by contacting the Office of Agreements at (202) 523-5793 or [tradeanalysis@fmc.gov](mailto:tradeanalysis@fmc.gov).  
*Agreement No.:* 011450-001.  
*Title:* Kyowa Shipping Co. Ltd. and Nippon Yusen Kaisha Space Charter Agreement.  
*Parties:* Kyowa Shipping Co. Ltd. and Nippon Yusen Kaisha.  
*Filing Party:* Robert Shababb, Corporate Counsel, NYK Line (North America) Inc.; 300 Lighting Way, 5th Floor; Secaucus, NJ 07094.  
*Synopsis:* The amendment clarifies the geographic scope and adds American Samoa to the scope.  
*Agreement No.:* 012243.  
*Title:* MOL/Glovis Space Charter Agreement.  
*Parties:* Mitsui O.S.K. Lines, Ltd. and Hyundai Glovis Co., Ltd.  
*Filing Party:* Robert B. Yoshitomi, Esq., Nixon Peabody LLP, Gas Company Tower, 555 West Fifth Street 46th Floor, Los Angeles, CA 90013.  
*Synopsis:* The agreement authorizes MOL to charter space to Glovis on MOL vessels for the transportation of new vehicles in the trade between Korea and the United States.

By Order of the Federal Maritime Commission.  
Dated: January 17, 2014.  
**Rachel E. Dickon,**  
*Assistant Secretary.*  
[FR Doc. 2014-01322 Filed 1-23-14; 8:45 am]  
**BILLING CODE 6730-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

[Document Identifier: HHS-OS-21329-60D]

**Agency Information Collection Activities; Proposed Collection; Public Comment Request**

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with 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 an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for revision of the approved information collection assigned OMB control number 0937-0198, which expires on June 25, 2015. Prior to submitting that 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 March 25, 2014.

**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-21329-60D for reference. Information Collection Request Title: Public Health Service Policies on Research Misconduct (42 CFR part 93)

*Abstract:* This is a revision to a currently approved collection, OMB number 0937-0198, Public Health Service Policies on Research Misconduct. The revision will include an additional form, called the Assurance of Compliance by Sub-Award Recipients form PHS-6315. The purpose of this form is to establish an assurance of compliance for a sub-award institution. The sub-awardee is also required to provide data from on the amount of research misconduct activity occurring in institutions conducting PHS supported research. Therefore, in addition this provides an annual

assurance that the sub-award institution has established and will follow administrative policies and procedures for responding to allegations of research misconduct that comply with the Public Health Service (PHS) Policies on Research Misconduct (42 CFR part 93). Research misconduct is defined as receipt of an allegation of research misconduct and/or the conduct of an inquiry and/or investigation into such allegations. These data enable the ORI to monitor institutional sub-awardee's compliance with the PHS regulation.

*Summary of the information collection:* Lastly, the forms will be used to respond to congressional requests for information to prevent misuse of Federal funds and to protect the public interest.

*Need and Proposed Use of the Information:* Public Health Service Policies on Research Misconduct (42 CFR part 93)—OMB No 0937-0198—Revision—Office of Research Integrity.

**Likely Respondents:** Public Health Service (PHS) research sub-award recipient.

**Burden Statement:** Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

ESTIMATED ANNUALIZED BURDEN TABLE

| Forms<br>(If necessary) | Type of<br>respondent        | Number of<br>respondents | Number of<br>responses per<br>respondent | Average burden<br>hours per<br>response | Total burden<br>hours |
|-------------------------|------------------------------|--------------------------|------------------------------------------|-----------------------------------------|-----------------------|
| PHS-6349 .....          | Awardee Institutions .....   | 6,096                    | 1                                        | 10/60                                   | 1,016                 |
| PHS-6315 .....          | Sub-award Institutions ..... | 200                      | 1                                        | 5/60                                    | 17                    |
| Total .....             | .....                        | .....                    | .....                                    | .....                                   | 1,033                 |

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,**

*Deputy, Information Collection Clearance Officer.*

[FR Doc. 2014-01415 Filed 1-23-14; 8:45 am]

**BILLING CODE 4150-28-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Presidential Advisory Council on HIV/AIDS

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting; the primary topic of discussion will be the Ryan White Program. The meeting will be open to the public.

**DATES:** The meeting will be held on February 27, 2014 from 9 a.m. to approximately 3 p.m. (EDT) and February 28, 2014 from 9 a.m. to approximately 12:30 p.m. (EDT).

**ADDRESSES:** U.S. Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201 in the Auditorium on February 27 and in the John M. Eisenberg Memorial Room (The Penthouse) on February 28, 2014.

**FOR FURTHER INFORMATION CONTACT:** Ms. Caroline Talev, Public Health Analyst, Presidential Advisory Council on HIV/AIDS, U.S. Department of Health and Human Services, 200 Independence Avenue SW., Room 443H, Washington, DC 20201; (202) 205-1178. More detailed information about PACHA can be obtained by accessing the Council's Web site [www.aids.gov/pacha](http://www.aids.gov/pacha).

**SUPPLEMENTARY INFORMATION:** PACHA was established by Executive Order 12963, dated June 14, 1995 as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective prevention of HIV disease and AIDS. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community

leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House Office on National AIDS Policy. The agenda for the upcoming meeting will be posted on the Council's Web site at [www.aids.gov/pacha](http://www.aids.gov/pacha).

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Due to space constraints, pre-registration for public attendance is advisable and can be accomplished by contacting Caroline Talev at [caroline.talev@hhs.gov](mailto:caroline.talev@hhs.gov) by close of business Wednesday, February 12, 2014. Members of the public will have the opportunity to provide comments at the meeting. Any individual who wishes to participate in the public comment session must register with Caroline Talev at [caroline.talev@hhs.gov](mailto:caroline.talev@hhs.gov) by close of business Wednesday, February 12, 2014; registration for public comment will not be accepted by telephone. Individuals are encouraged to provide a written statement of any public comment(s) for accurate minute taking purposes. Public comment will be limited to two minutes per speaker. Any members of the public who wish to have printed material distributed to PACHA members at the meeting should submit, at a minimum, 1 copy of the material(s) to Caroline Talev, no later than close of business February 12, 2014.

Dated: January 9, 2014.

**B. Kaye Hayes,**

*Executive Director, Presidential Advisory Council on HIV/AIDS.*

[FR Doc. 2014-01360 Filed 1-23-14; 8:45 am]

**BILLING CODE 4150-43-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30-Day-14-0881]

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of

information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639-7570 or send an email to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to 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

Data Calls for the Laboratory Response Network—Extension—(OMB No. 0920-0881, expires 3/31/14)—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

### Background and Brief Description

The Laboratory Response Network (LRN) was established by the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) in accordance with Presidential Decision Directive 39, which outlined national anti-terrorism policies and assigned specific missions to Federal departments and agencies. The LRN's mission is to maintain an integrated national and international network of laboratories that can respond to acts of biological, chemical, or radiological terrorism and other public health emergencies. Federal, State, and local public health laboratories voluntarily join the LRN.

The LRN Program Office maintains a database of information for each member laboratory that includes contact information as well as staff and equipment inventories. However, semiannually or during emergency response, the LRN Program Office may conduct a Special Data Call to obtain additional information from LRN Member Laboratories in regards to biological or chemical terrorism preparedness. Special Data Calls may be conducted via queries that are distributed by broadcast emails or by survey tools (i.e. Survey Monkey). This is a request for an extension to this generic clearance. The only cost to respondents is their time to respond to the data call. The total annual burden hours requested is 400 hours.

## ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents               | Form name         | No. of respondents | No. of responses per respondent | Avg. Burden per response (in hrs.) |
|-----------------------------------|-------------------|--------------------|---------------------------------|------------------------------------|
| Public Health Laboratorians ..... | Special Data Call | 200                | 4                               | 30/60                              |

**Leroy Richardson,**

Chief, Information Collection Review Office,  
Office of Scientific Integrity, Office of the  
Associate Director for Science, Office of the  
Director, Centers for Disease Control and  
Prevention.

[FR Doc. 2014-01409 Filed 1-23-14; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2014-N-0056]

#### Biofilms, Medical Devices, and Anti-Biofilm Technology—Challenges and Opportunities; Public Workshop; Request for Comments

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

**ACTION:** Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing the following public workshop entitled “Biofilms, Medical Devices, and Anti-Biofilm Technology—Challenges and Opportunities.” FDA is cosponsoring this workshop with the Center for Biofilm Engineering of Montana State University. The purpose of the public workshop is to initiate dialogue between academia, industry, and U.S. Government scientists on the science of developing products to address biofilm formation. Topics of discussion include current scientific and medical research on biofilms, their impact on medical devices, and biofilm prevention strategies and their public health impact.

**DATES:** The public workshop will be held on February 20, 2014, from 8 a.m. to 5 p.m.

**ADDRESSES:** The public workshop will be held at FDA’s White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503A), Silver Spring, MD 20993-0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to <http://www.fda.gov/AboutFDA/>

[WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm](http://WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm).

#### FOR FURTHER INFORMATION CONTACT:

Geetha Jayan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 3622, Silver Spring, MD 20903-0002, 301-796-6300, email: [geetha.jayan@fda.hhs.gov](mailto:geetha.jayan@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

**Registration:** Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by 5 p.m. February 7, 2014. Early registration is recommended because facilities are limited and, therefore, FDA 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 7 a.m.

If you need special accommodations due to a disability, please contact Susan Monahan, (email: [susan.monahan@fda.hhs.gov](mailto:susan.monahan@fda.hhs.gov) or phone: 301-796-5661) no later than February 7, 2014.

To register for the public workshop, please visit FDA’s Medical Devices News & Events—Workshops & Conferences calendar at <http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm>. (Select this public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, email, and telephone number. Those without Internet access should contact Susan Monahan to register. Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

**Streaming Webcast of the Public Workshop:** This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by 5 p.m. (EST) on February 6, 2014. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after February 14,

2014. If you have never attended a Connect Pro event before, test your connection at [https://collaboration.fda.gov/common/help/en/support/meeting\\_test.htm](https://collaboration.fda.gov/common/help/en/support/meeting_test.htm). To get a quick overview of the Connect Pro program, visit [http://www.adobe.com/go/connectpro\\_overview](http://www.adobe.com/go/connectpro_overview). (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

**Comments:** FDA is holding this public workshop to obtain information on biofilms and anti-biofilm technology on medical devices. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public workshop topics. The deadline for submitting comments related to this public workshop is March 20, 2014.

Regardless of attendance at the public workshop, interested persons may submit either electronic comments regarding this document to <http://www.regulations.gov> or written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. 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. In addition, when responding to specific questions as outlined in section II, please identify the question you are addressing. 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>.

**Transcripts:** Please be advised that as soon as a transcript is available, it will be accessible at <http://www.regulations.gov>. It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD-ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM-1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available

approximately 45 days after the public workshop on the Internet at <http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm>. (Select this public workshop from the posted events list).

## I. Background

Biofilms play a key role in the development of device-related and other healthcare associated infections. Published literature indicates that biofilms are a major culprit in the development of resistant infections. However, the biochemical and physiochemical characteristics of biofilms are not widely understood.

With the increasing use of implanted and indwelling devices, understanding biofilm development on these devices and factors that impact biofilm formation is critical. Research on the basic science of biofilms may provide insight on device-associated biofilms, ultimately advancing research on technologies that are intended to prevent biofilm formation.

This public workshop seeks to share scientific information between academia, industries interested in developing products to address biofilm contamination, and U.S. Government scientists.

## II. Topics for Discussion at the Public Workshop

FDA seeks to address and receive comments on the following topics:

1. Research on biofilms and their public health impact.
2. Challenges faced by the scientific community, government, and industry on addressing biofilm contamination of medical devices.
3. Critical areas of research that will address the scientific and clinical challenges faced by the stakeholders when developing technologies that are intended to prevent biofilm formation.

This public workshop may also form the basis for future discussions related to novel biofilm prevention technologies that could benefit U.S. public health.

Dated: January 17, 2014.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2014-01412 Filed 1-23-14; 8:45 am]

**BILLING CODE 4160-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2012-N-0284]

#### Pediatric Studies of Sodium Nitroprusside Conducted in Accordance With the Public Health Service Act; Availability of Summary Report and Requested Labeling Changes

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a summary report of the pediatric studies of sodium nitroprusside conducted in accordance with the Public Health Service Act (the PHS Act) and is making available requested labeling changes for sodium nitroprusside. The Agency is making this information available consistent with the PHS Act.

**FOR FURTHER INFORMATION CONTACT:** Lori Gorski, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6415, Silver Spring, MD 20993-0002, 301-796-2200, Fax: 301-796-9855, email: [lori.gorski@fda.hhs.gov](mailto:lori.gorski@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Sodium Nitroprusside Summary Review

In the **Federal Register** of January 21, 2003 (68 FR 2789), sodium nitroprusside (SNP) was identified as a drug that needed further study in pediatrics. The approved labeling lacked adequate information on dosing, pharmacokinetics, tolerability, and safety information in pediatric patients from birth to 18 years of age who receive SNP for controlled reduction of blood pressure.

A written request (WR) for pediatric studies of sodium nitroprusside was issued on July 8, 2002, to Abbott Laboratories, the holder of the new drug application for sodium nitroprusside. FDA did not receive a response to the written request. Accordingly, the National Institutes of Health (NIH) issued a request for proposals to conduct the pediatric studies described in the written request in July 2004 and awarded funds to Duke University and Stanford University in September 2004 to complete the studies described in the written request.

The Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD) submitted

clinical study reports for SNP. The two studies are:

- NICHD-2003-09-DR-SNP1: A randomized double-blind, parallel group, dose-ranging, effect-controlled, multicenter study of intravenous infusions of SNP in pediatric patients who require deliberate, controlled relative-induced hypotension for at least 2 hours.

- NICHD-2003-09-LT-SNP2: A multicenter, randomized, double-blind, placebo-controlled, parallel group study to determine the pharmacodynamics of sodium nitroprusside during the prolonged infusion in pediatric subjects. This study was a withdrawal to placebo study.

Upon completion of these pediatric studies, a report of the pediatric studies of sodium nitroprusside was submitted to NIH and FDA. In the **Federal Register** of October 3, 2012 (77 FR 60441), FDA announced the opening on August 31, 2012, of docket FDA-2012-N-0284 for submission of data from pediatric studies of sodium nitroprusside. The data submitted to the docket were submitted in accordance with section 409I of the PHS Act (42 U.S.C. 284m) and were the same data submitted to investigational new drug application 71,979, with the exception that personal privacy information had been redacted from the data submitted to the docket.

The sodium nitroprusside docket remained opened for public comment from October 3, 2012, through November 2, 2012. There were no comments submitted to the docket during that time, and a memorandum for the record stating such was posted to the docket on November 5, 2012.

During the review of the submission, the Division of Cardiovascular and Renal Products identified inconsistencies in subject numbers between the pharmacokinetic/pharmacodynamic (PK/PD) analysis set and the ITT-E (intent to treat-efficacy) population in the study report NICHD-2003-09-DR-SNP1 and notified NIH. In a meeting with FDA on November 29, 2012, NIH indicated that they identified treatment assignment inconsistencies between the two datasets and provided a strategy for addressing the concern and performing reanalysis. The need for reanalysis resulted in suspension of the review as of November 29, 2012. The corrected datasets and reanalysis were provided to the Agency and submitted to the docket on September 26, 2013.

The key findings of this submission are:

- The blood pressure lowering effect of SNP was demonstrated in both of the trials.

- A higher proportion of patients in the high-dose group achieved target mean arterial pressure (MAP) compared to the lowest dose of 0.3 microgram/kilogram/minute ( $\mu\text{g/kg/min}$ ). The time-to-target MAP was also significantly shorter for the high-dose groups.

- With a starting dose of 0.3  $\mu\text{g/kg/min}$ , ~25 percent of patients achieved target MAP in 5 minutes. Maintaining on a stable dose of 0.3  $\mu\text{g/kg/min}$  for 10 minutes resulted in ~50 percent of patients reaching target MAP. Hence, a starting dose of 0.3  $\mu\text{g/kg/min}$  is reasonable. It should also be noted that it may be prudent to maintain the infusion rate for an additional 5 to 10 minutes before titrating.

- The proportion of patients with MAP reductions of >20 percent below target increased in a dose-dependent manner.

- The safety profile of SNP in both the trials was largely consistent with the expected events as a result of the underlying disease and preoperative setting. Only blood pressure reduction events were clearly drug- and dose-related.

- Even though only four neonates were studied in the trial, there is no expectation that the PK/PD relationship and the safety profile would be any different in this age group.

- The FDA Adverse Event Reporting System (FAERS) search (up to October 25, 2012) retrieved only 26 pediatric cases with SNP use. Of these, four cases of elevated carboxyhemoglobin associated with SNP treatment were reported. The Office of Surveillance and Epidemiology review outlines several reasons why these data cannot be used to calculate incidence of adverse events in the population.

- For this submission, one large site (N = 36 enrolled in Protocol NICH-2003-09-LT-SNP2; Investigator: Dr. David Rosen) was inspected. The Office of Scientific Investigations recommends the data be accepted.

- As a part of the WR, long-term safety data and a 1-year followup period for patients enrolled in the trial were sought. Information from followup was not available in the submission. However, the value of such information is limited and is not expected to have an impact on the ability to overcome the labeling gap. The complete report can be found at docket number FDA-2012-N-0284.

## II. Recommendation

The submission provides a reasonable algorithm for administration of sodium nitroprusside to allow its use in perioperative settings to achieve controlled hypotension for pediatric

patients from birth to 18 years. FDA's requested labeling changes are available on the FDA Web site at <http://www.fda.gov/Drugs/DevelopmentApprovalProcess/DevelopmentResources/ucm379088.htm> and in the docket (Ref. 1).

## III. 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 person between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at <http://www.regulations.gov>.

### 1. FDA Requested Labeling Changes.

Dated: January 10, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014-01390 Filed 1-23-14; 8:45 am]

BILLING CODE 4160-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel PAR12-265: NIDDK Ancillary Studies to Major Ongoing Clinical Research: Epidemiology of Gut Microbiome in Diabetes.

*Date:* February 28, 2014.

*Time:* 2:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health,

Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-8894, [begumn@nidddk.nih.gov](mailto:begumn@nidddk.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 17, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014-01386 Filed 1-23-14; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0099]

**Agency Information Collection Activities: Application for T Nonimmigrant Status; Application for Immediate Family Member of T-1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, Form I-914 and Supplements A and B. Extension, Without Change, of a Currently Approved Collection**

**ACTION:** 60-day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information or new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until March 25, 2014.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615-0099 in the subject box, the agency name and Docket ID USCIS USCIS-2006-0059. 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-2006-0059;

(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.

#### SUPPLEMENTARY INFORMATION:

#### Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

*Note:* The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: <https://egov.uscis.gov/cris/Dashboard.do>, or call the USCIS National Customer Service Center at 1-800-375-5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status; Application for Immediate Family Member of T-1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I-914 and Supplements A and B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Individuals or households. Form I-914 permits victims of severe forms of trafficking and their immediate family members to demonstrate that they qualify for temporary nonimmigrant status pursuant to the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), and to receive temporary immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I-914, 500 responses at 2 hours and 15 minutes (2.25 hours) per response; Supplement A, 500 responses at 1 hour per response; Supplement B, 200 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,725 annual burden hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: <http://www.regulations.gov>. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529-2140, Telephone number 202-272-8377.

Dated: January 17, 2014.

**Laura Dawkins,**

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014-01385 Filed 1-23-14; 8:45 am]

**BILLING CODE 9111-97-P**

#### DEPARTMENT OF HOMELAND SECURITY

#### U.S. Citizenship and Immigration Services

[OMB Control Number 1615-NEW]

#### Agency Information Collection Activities: Record of Abandonment of Lawful Permanent Resident Status, Form I-407; Existing Collection In Use Without an OMB Control Number

**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 September 20, 2013, at 78 FR 57869, allowing for a 60-day public comment period. USCIS received comments from one commenter 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 February 24, 2014. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). The comments submitted to the OMB USCIS Desk Officer may also be submitted to DHS via the Federal eRulemaking Portal Web site at <http://www.regulations.gov> under e-Docket ID number USCIS-2013-0005 or via email at [uscisfrcomment@uscis.dhs.gov](mailto:uscisfrcomment@uscis.dhs.gov). All submissions received must include the agency name and the OMB Control Number [1615-NEW].

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. 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 Request:* Existing Collection In Use Without an OMB Control Number.

(2) *Title of the Form/Collection:* Record of Abandonment of Lawful Permanent Resident Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I-407; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Lawful Permanent Residents (LPRs) use Form I-407 to inform USCIS and formally record their abandonment of lawful permanent resident status. U.S. Citizenship and Immigration Services uses the information collected in Form I-407 to record the LPR's abandonment of lawful permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 9,371 responses at 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,342 annual burden hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit <http://www.regulations.gov>. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529-2140; Telephone 202-272-8377.

Dated: January 17, 2014.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2014-01379 Filed 1-23-14; 8:45 am]

**BILLING CODE 9111-97-P**

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5750-N-04]

#### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

#### FOR FURTHER INFORMATION CONTACT:

Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402-3970; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v.*

*Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Office of Enterprise Support Programs, Program Support Center, HHS, room 12-07, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should



call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Energy*: Mr. David Steinau, Department of Energy, Office of Property Management, 1000 Independence Ave., SW., Washington, DC 20585 (202) 586–5422; (This is not a toll-free number).

Dated: January 16, 2014.

**Mark Johnston,**

*Deputy Assistant Secretary for Special Needs.*

**TITLE V, FEDERAL SURPLUS  
PROPERTY PROGRAM FEDERAL  
REGISTER REPORT FOR 01/24/2014  
SUITABLE/AVAILABLE PROPERTIES**

BUILDING

ILLINOIS

Bldg. 123

31a Blackhawk—Lab 8 North  
Fermi National Accelerator Laboratory  
Batavia IL 60510

Landholding Agency: Energy  
Property Number: 41201340007

Status: Excess

Comments: Off-site removal only; 1,650  
sq. ft.; office; 43 years old; secured  
area; contact Energy for more  
information.

[FR Doc. 2014–01193 Filed 1–23–14; 8:45 am]

**BILLING CODE 4210–67–P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–HQ–IA–2014–N015; FXIA16710900000  
–145–FF09A30000]**

**Endangered Species; Marine Mammals  
Receipt of Applications for Permit**

**AGENCY:** Fish and Wildlife Service,  
Interior.

**ACTION:** Notice of receipt of applications  
for permit.

**SUMMARY:** We, the U.S. Fish and  
Wildlife Service, invite the public to  
comment on the following applications  
to conduct certain activities endangered  
species, marine mammals, or both. With  
some exceptions, the Endangered

Species Act (ESA) and Marine Mammal  
Protection Act (MMPA) prohibits  
activities with listed species unless  
Federal authorization is acquired that  
allows such activities.

**DATES:** We must receive comments or  
requests for documents on or before  
February 24, 2014. We must receive  
requests for marine mammal permit  
public hearings, in writing, at the  
address shown in the **ADDRESSES** section  
by February 24, 2014.

**ADDRESSES:** Brenda Tapia, Division of  
Management Authority, U.S. Fish and  
Wildlife Service, 4401 North Fairfax  
Drive, Room 212, Arlington, VA 22203;  
fax (703) 358–2280; or email [DMAFR@fws.gov](mailto:DMAFR@fws.gov).

**FOR FURTHER INFORMATION CONTACT:**  
Brenda Tapia, (703) 358–2104  
(telephone); (703) 358–2280 (fax);  
[DMAFR@fws.gov](mailto:DMAFR@fws.gov) (email).

**SUPPLEMENTARY INFORMATION:**

**I. Public Comment Procedures**

*A. How do I request copies of  
applications or comment on submitted  
applications?*

Send your request for copies of  
applications or comments and materials  
concerning any of the applications to  
the contact listed under **ADDRESSES**.  
Please include the **Federal Register**  
notice publication date, the PRT-  
number, and the name of the applicant  
in your request or submission. We will  
not consider requests or comments sent  
to an email or address not listed under  
**ADDRESSES**. If you provide an email  
address in your request for copies of  
applications, we will attempt to respond  
to your request electronically.

Please make your requests or  
comments as specific as possible. Please  
confine your comments to issues for  
which we seek comments in this notice,  
and explain the basis for your  
comments. Include sufficient  
information with your comments to  
allow us to authenticate any scientific or  
commercial data you include.

The comments and recommendations  
that will be most useful and likely to  
influence agency decisions are: (1)  
Those supported by quantitative  
information or studies; and (2) Those  
that include citations to, and analyses  
of, the applicable laws and regulations.  
We will not consider or include in our  
administrative record comments we  
receive after the close of the comment  
period (see **DATES**) or comments  
delivered to an address other than those  
listed above (see **ADDRESSES**).

*B. May I review comments submitted by  
others?*

Comments, including names and  
street addresses of respondents, will be  
available for public review at the street  
address listed under **ADDRESSES**. The  
public may review documents and other  
information applicants have sent in  
support of the application unless our  
allowing viewing would violate the  
Privacy Act or Freedom of Information  
Act. Before including your address,  
phone number, email address, or other  
personal identifying information in your  
comment, you should be aware that  
your entire comment—including your  
personal identifying information—may  
be made publicly available at any time.  
While you can ask us in your comment  
to withhold your personal identifying  
information from public review, we  
cannot guarantee that we will be able to  
do so.

**II. Background**

To help us carry out our conservation  
responsibilities for affected species, and  
in consideration of section 10(a)(1)(A) of  
the Endangered Species Act of 1973, as  
amended (16 U.S.C. 1531 *et seq.*), and  
the Marine Mammal Protection Act of  
1972, as amended (16 U.S.C. 1361 *et  
seq.*), along with Executive Order 13576,  
“Delivering an Efficient, Effective, and  
Accountable Government,” and the  
President’s Memorandum for the Heads  
of Executive Departments and Agencies  
of January 21, 2009—Transparency and  
Open Government (74 FR 4685; January  
26, 2009), which call on all Federal  
agencies to promote openness and  
transparency in Government by  
disclosing information to the public, we  
invite public comment on these permit  
applications before final action is taken.  
Under the MMPA, you may request a  
hearing on any MMPA application  
received. If you request a hearing, give  
specific reasons why a hearing would be  
appropriate. The holding of such a  
hearing is at the discretion of the  
Service Director.

**III. Permit Applications**

*A. Endangered Species*

Applicant: World Class Reptiles,  
Bastrop, TX; PRT–09757B

The applicant requests amendment to  
their captive-bred wildlife registration  
under 50 CFR 17.21(g) to include golden  
parakeet (*Guarouba guarouba*), Cuban  
parrot (*Amazona leucocephala*),  
salmon-crested cockatoo (*Cacatua  
moluccensis*), yellow-spotted river turtle  
(*Podocnemis unifilis*), tartaruga  
(*Podocnemis expansa*), and spotted  
pond turtle (*Geoclemys hamiltonii*) to

enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Zoological Consortium of Maryland, Inc., Thurmont, MD; PRT-10226B

The applicant requests amendment to their captive-bred wildlife registration under 50 CFR 17.21(g) to include the following species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species

Anoa (*Bubalus depressicornis*)

Bontebok (*Damaliscus pygargus pygargus*)

Asian wild ass (*Equus hemionus*)

Woylie (*Bettongia penicillata*)

Golden parakeet (*Guarouba guarouba*)

Red-crowned crane (*Grus japonensis*)

Grand Cayman blue iguana (*Cyclura lewisi*)

Cayman Brac iguana (*Cyclura nubila caymanensis*)

Cuban ground iguana (*Cyclura nubila*)

Chinese alligator (*Alligator sinensis*)

African dwarf crocodile (*Osteolaemus tetraspis*)

Applicant: Godwins Gatorland Inc., Orlando, FL; PRT-093325

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the family Crocodylidae, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Shawn Heflick, Palm Bay, FL; PRT-28052A

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species

African slender-snouted crocodile (*Crocodylus cataphractus*)

Cuban crocodile (*Crocodylus rhombifer*),

Nile crocodile (*Crocodylus niloticus*)

Saltwater crocodile (*Crocodylus porosus*)

Siamese crocodile (*Crocodylus siamensis*)

African dwarf crocodile (*Osteolaemus tetraspis*)

Common caiman (*Caiman crocodylus crocodylus*)

Brown caiman (*Caiman crocodylus fuscus*)

Yacare caiman (*Caiman yacare*)

Broad-snouted caiman (*Caiman latirostris*)

Chinese alligator (*Alligator sinensis*)

Radiated tortoise (*Astrochelys radiata*)

Galapagos tortoise (*Chelonoidis nigra*)

Cuban ground iguana (*Cyclura nubila nubila*)

Grand Cayman blue iguana (*Cyclura lewisi*)

Applicant: James Badman, Mesa, AZ; PRT-099586

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species

Spotted pond turtle (*Geoclemys hamiltonii*)

Galapagos tortoise (*Chelonoidis nigra*)

Radiated tortoise (*Astrochelys radiata*)

Bali starling (*Leucopsar rothschildi*)

Golden parakeet (*Guarouba guarouba*)

Applicant: Hill Ranch Ltd., Glen Rose, TX; PRT-25042B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Hill Ranch Ltd., Glen Rose, TX; PRT-25041B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities over a 5-year period.

Applicant: John Grigus, Lemont, IL; PRT-25262B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Kyle Asplundh, New Hope, PA; PRT-25444B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for Galapagos tortoise (*Chelonoidis nigra*), radiated tortoise (*Astrochelys radiata*), spotted pond turtle (*Geoclemys hamiltonii*), yellow-spotted river turtle (*Podocnemis unifilis*), Siamese crocodile (*Crocodylus siamensis*), African dwarf crocodile (*Osteolaemus tetraspis*), caiman (*Caiman crocodylus*), Yacare caiman (*Caiman yacare*), broad-snouted caiman (*Caiman latirostris*), and Grand Cayman blue iguana (*Cyclura lewisi*), to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: The Zoo Foundation Inc., dba Alabama Gulf Coast Zoo, Gulf Shores, AL; PRT-25202B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) to include the following species, to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species:

Galapagos tortoise (*Chelonoidis nigra*)

Radiated tortoise (*Astrochelys radiata*)

Spotted pond turtle (*Geoclemys hamiltonii*)

Caiman (*Caiman crocodylus*)

Yacare caiman (*Caiman yacare*)

Grand Cayman blue iguana (*Cyclura lewisi*)

Golden parakeet (*Guarouba guarouba*)

Salmon-crested cockatoo (*Cacatua moluccensis*)

Ring-tailed lemur (*Lemur catta*)

Black and white ruffed lemur (*Varecia variegata*)

Red ruffed lemur (*Varecia rubra*)

Brown lemur (*Eulemur fulvus*),

Cotton-top tamarin (*Saguinus oedipus*)

Mandrill (*Mandrillus sphinx*)

Lar gibbon (*Hylobates lar*)

Leopard (*Panthera pardus*)

Addax (*Addax nasomaculatus*)

Red lechwe (*Kobus leche*)

Applicant: James DeWoody, Lafayette, IN; PRT-25261B

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*B. Endangered Marine Mammals and Marine Mammals*

Applicant: BBC Television, Bristol, England, United Kingdom; PRT-13110B

The applicant requests a permit to photograph northern sea otters (*Enhydra lutris kenyoni*) in Alaska, from the ground and in the water, for commercial and educational purposes. This notification covers activities to be conducted by the applicant over a 1-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2014-01368 Filed 1-23-14; 8:45 am]

BILLING CODE 4310-55-P

**INTERNATIONAL TRADE COMMISSION**

[Investigation No. 337-TA-905]

**Certain Wireless Devices, Including Mobile Phones and Tablets II  
Institution of Investigation Pursuant to 19 U.S.C. 1337**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 18, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Pragmatus Mobile, LLC of Alexandria, Virginia. Letters supplementing the complaint were filed on January 2 and 8, 2014. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless devices, including mobile phones and tablets by reason of infringement of U.S. Patent No. 8,149,124 ("the '124 patent") and U.S. Patent No. 8,466,795 ("the '795 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:** The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2013).

**Scope of Investigation:** Having considered the complaint, the U.S. International Trade Commission, on January 17, 2014, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wireless devices, including mobile phones and tablets by reason of infringement of one or more of claims 1-5, 7-17, and 19-21 of the '124 patent and claims 1-33 of the '795 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Pragmatus Mobile, LLC, 601 King Street, Suite 200, Alexandria, VA 22314

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nokia Corporation (Nokia Oyj),

Keilalahdentie 2-4, F1-02150 Espoo, Finland

Nokia, Inc., 200 South Mathilda Avenue, Sunnyvale, CA 94086

Samsung Electronics Co., Ltd, 1320-10, Seocho 2-dong Seocho-gu, Seoul, Republic of Korea

Samsung Electronics America, Inc., 105 Challenger Rd., Ridgefield Park, NJ 07660

Samsung Telecommunications America, L.L.C., 1301 East Lookout Drive, Richardson, TX 75082

Sony Corporation, 1-7-1 Konan, Minato-ku, Tokyo 108-0075, Japan  
Sony Mobile Communications AB, Sölvegatan 51, 223 62 Lund, Sweden  
Sony Mobile Communications (USA), Inc., 3333 Piedmont Rd Ne #600, Atlanta, GA 30305

ZTE Corporation, ZTE Plaza, No. 55, Hi-Tech Road South Hi-Tech Industrial Park, Shenzhen 518057, Guangdong, China

ZTE (USA) Inc., 2425 N. Central Expressway #323, Richardson, Texas 75080

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be

deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Dated: January 17, 2014.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2014-01393 Filed 1-23-14; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-833]

### **Certain Digital Models, Digital Data, and Treatment Plans for Use in Making Incremental Dental Positioning Adjustment Appliances, the Appliances Made Therefrom, and Methods of Making the Same; Commission Determination To Extend the Target Date for Completion of the Investigation; Schedule for Filing of Additional Written Submissions From the Parties and the Public**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to extend the target date for completion of the above-captioned investigation and to solicit additional briefing from the parties and the public.

**FOR FURTHER INFORMATION CONTACT:** James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-3065. 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 (<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:** This investigation was instituted on April 5, 2012, based upon a complaint filed on behalf of Align Technology, Inc., of San Jose, California ("Align"), on March 1, 2012, as corrected on March 22, 2012. 77 FR 20648 (April 5, 2012). The complaint alleged violations of Section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 ("Section 337") in the sale for importation, importation, or sale within the United States after importation of certain digital models, digital data, and treatment plans for use in making incremental dental appliances, the appliances made therefrom, and methods of making the same by reason of infringement of certain claims of U.S. Patent No. 6,217,325 ("the '325 patent'"); U.S. Patent No. 6,471,511 ("the '511 patent'"); U.S. Patent No. 6,626,666; U.S. Patent No. 6,705,863 ("the '863 patent'"); U.S. Patent No. 6,722,880 ("the '880 patent'"); U.S. Patent No. 7,134,874 ("the '874 patent'"); and U.S. Patent No. 8,070,487 (the '487 patent'). The notice of institution named as respondents ClearCorrect Pakistan (Private), Ltd. of Lahore, Pakistan and ClearCorrect Operating, LLC of Houston, Texas (collectively, "the Respondents").

On May 6, 2013, the administrative law judge issued the final ID, finding a violation of Section 337 with respect to the '325 patent, the '880 patent, the '487 patent, the '511 patent, '863 patent, and the '874 patent. The ALJ recommended the issuance of cease and desist orders.

On May 20, 2013, Align, the Respondents, and the Commission investigative attorney each filed a petition for review. On May 28, 2013, each of the parties filed a response thereto. On June 5, 2013, Align filed a statement on the public interest. On June 13, 2013, the Respondents filed a statement on the public interest.

On June 7, 2013, the Commission issued notice of its determination to extend the deadline for determining whether to review the final ID to July 25, 2013, and to extend the target date to September 24, 2013.

On July 25, 2013, the Commission issued notice of its determination to review the final ID in its entirety and to solicit briefing on the issues on review and on remedy, the public interest, and bonding. 78 FR 46611 (August 1, 2013). On August 8, 2013, each of the parties filed written submissions. On August 15, 2013, each filed reply submissions.

On September 24, 2013, the Commission issued notice of its determination to extend the target date to November 1, 2013.

On November 18, 2013, the Commission issued notice of its determination to extend the target date to January 17, 2014.

The Commission has determined to extend the target date for completion of the above-captioned investigation to March 21, 2014, and to solicit briefing as follows.

The Commission is interested in receiving public comment on the following question:

**Question 1:** Are electronic transmissions "articles" within the meaning of Section 337? Please answer with respect to the text, structure, and legislative history of Section 337. Also address any potentially relevant judicial precedent, such as *Bayer AG v. Housey Pharmaceuticals, Inc.*, 340 F.3d 1367, 1373-74 (Fed. Cir. 2003), and *Suprema, Inc. v. Int'l Trade Comm'n*, \_\_\_ F.3d \_\_\_, Nos. 2012-1170, -1026, -1124, 2013 WL 6510929 (Fed. Cir. December 13, 2013); Commission decisions, including *Certain Hardware Logic Emulation Systems and Components Thereof*, Inv. No. 337-TA-383 (1998); and any other potentially informative decisions by other government agencies.

In addition, the Commission is interested in public comment and also encourages submissions by the parties to the investigation, interested government agencies, the Office of Unfair Import Investigations, and any other interested persons on the following questions, with reference to the applicable law, and the existing evidentiary record:

**Question 2:** In analyzing whether the term "articles" encompasses electronic transmissions, should the Commission take into account whether the electronic transmission is of data that is directly representative of a physical article?

**Question 3:** Does the term "processed" in Section 337(a)(1)(B)(ii) include data processing by a computer?

**Question 4:** Does the term "a material" in the phrase "a material or apparatus for use in practicing a patented process" in 35 U.S.C. 271(c) include electronic transmissions?

**Written Submissions:** The written submissions must be filed no later than close of business on February 3, 2014. Reply submissions must be filed no later than the close of business on February 10, 2014. The written submissions must be no longer than 50 pages and the reply submissions must be no longer than 25 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must do so in accordance with Commission rule 210.4(f), 19 CFR 210.4(f), which requires electronic filing. The original document and 8 true copies thereof must also be filed on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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).

By order of the Commission.

Dated: January 17, 2014.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2014-01394 Filed 1-23-14; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-906]

### Certain Standard Cell Libraries, Products Containing or Made Using the Same, Integrated Circuits Made Using the Same, and Products Containing Such Integrated Circuits; Institution of Investigation Pursuant to 19 U.S.C. § 1337

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 23, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Tela Innovations, Inc. of Los Gatos, California. A letter supplementing the complaint was filed on January 6, 2014. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the

United States after importation of certain standard cell libraries, products containing or made using the same, integrated circuits made using the same, and products containing such integrated circuits by reason of infringement of certain claims of U.S. Patent No. 8,490,043 ("the '043 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:** The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2013).

**Scope of Investigation:** Having considered the complaint, the U.S. International Trade Commission, on January 7, 2014, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain standard cell libraries, products containing or made using the same, integrated circuits made using the same, and products containing such integrated circuits by reason of

infringement of one or more of claims 1-16 of the '043 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Tela Innovations, Inc., 485 Alberto Way, Suite 115, Los Gatos, CA 95032.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Taiwan Semiconductor Manufacturing Company, Limited, No. 8, Li-Hsin Rd. VI, Hsinchu Science Park, Hsinchu, Taiwan 300-78.  
TSMC North America, 2585 Junction Avenue, San Jose, CA 95134.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the

administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Dated: January 17, 2014.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2014-01392 Filed 1-23-14; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

[OMB Number 1121-0102]

#### **Agency Information Collection Activities: Existing Collection; Comment Requested; Extension and Revision of Existing Collection(s): Prison Population Reports: Summary of Sentenced Population Movement—National Prisoner Statistics**

**ACTION:** 60-Day Notice.

The Department of Justice (DOJ), Office of Justice Programs, will be submitting the following information collection to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for “sixty days” until March 25, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially regarding the estimated public burden and associated response time, or need a copy of the proposed information collection instrument with instructions or additional information, please contact E. Ann Carson by email at [elizabeth.carson@usdoj.gov](mailto:elizabeth.carson@usdoj.gov) or at (202) 316-3496.

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:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency’s estimate of the burden of the

collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, 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 and minor revision of currently approved collection.

(2) *Title of the Form/Collection:* Summary of Sentenced Population Movement—National Prisoner Statistics.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

(a) *Form number:* NPS-1B. Office of Justice Programs, U.S. Department of Justice.

(b) *Form number:* NPS-1B(T). Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* For the NPS-1B form, 51 central reporters (one from each state and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) As of December 31, the number of male and female inmates within their custody and under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates;

(b) The number of inmates housed in privately operated facilities, county or other local authority correctional facilities, or in other state or Federal facilities on December 31;

(c) Prison admission information in the calendar year for the following categories: new court commitments, parole violators, other conditional release violators returned, transfers from other jurisdictions, AWOLs and escapees returned, and returns from appeal and bond;

(d) Prison release information in the calendar year for the following categories: expirations of sentence, commutations, other conditional releases, probations, supervised mandatory releases, paroles, other conditional releases, deaths by cause, AWOLs, escapes, transfers to other

jurisdictions, and releases to appeal or bond;

(e) Number of inmates under jurisdiction on December 31 by race and Hispanic origin;

(f) Number of inmates in custody classified as non-citizens and/or under 18 years of age;

(g) Testing of incoming inmates for HIV; and HIV infection and AIDS cases on December 31; and

(h) The aggregated rated, operational, and/or design capacities, by sex, of the state/BOP’s correctional facilities at year-end.

For the NPS-1B(T) form, five central reporters from the U.S. Territories and Commonwealths of Guam, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, and American Samoa will be asked to provide information for the following categories for the calendar year just ended, and, if available, for the previous calendar year:

(a) As of December 31, the number of male and female inmates within their custody and under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates; and an assessment of the completeness of these counts (complete, partial, or estimated)

(b) The number of inmates under jurisdiction on December 31 but in the custody of facilities operated by other jurisdictions’ authorities solely to reduce prison overcrowding;

(c) Number of inmates under jurisdiction on December 31 by race and Hispanic origin;

(d) The aggregated rated, operational, and/or design capacities, by sex, of the territory’s/Commonwealth’s correctional facilities at year-end.

The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond:*

(a) *NPS-1B form:* 51 respondents, each taking an average 6.5 total hours to respond.

(b) *NPS-1B(T) form:* 5 respondents, each taking an average of 2 hours to respond.

Burden hours remain the same for the 51 respondents to the NPS-1B form. An additional 10 hours are added for the 5 respondents to the NPS-1B(T) form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 342 annual burden 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 3W-1407B, Washington, DC 20530.

Dated: January 21, 2014.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2014-01411 Filed 1-23-14; 8:45 am]

**BILLING CODE 4410-18-P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Petitions for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

**DATES:** All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before February 24, 2014.

**ADDRESSES:** You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail:* [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov). Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202-693-9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939, Attention: Sheila McConnell, Acting Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

#### FOR FURTHER INFORMATION CONTACT:

Barbara Barron, Office of Standards, Regulations and Variances at 202-693-9447 (Voice), [barron.barbara@dol.gov](mailto:barron.barbara@dol.gov) (Email), or 202-693-9441 (Facsimile). [These are not toll-free numbers.]

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

##### II. Petitions for Modification

*Docket Number:* M-2013-055-C.

*Petitioner:* Signal Peak Energy, 100 Portal Drive, Roundup, Montana 59072.

*Mine:* Bull Mountain Mine #1, MSHA I.D. No. 24-01950, located in Musselshell County, Montana.

*Regulation Affected:* 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

*Modification Request:* The petitioner requests a modification of the existing standard to permit the use of nonpermissible electronic testing or diagnostic equipment within 150 feet of pillar workings or longwall faces. The equipment to be used includes laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, insulating testers (meggers), voltage current and power measurement devices signal analyzer devices, ultrasonic thickness gauges, electronic component testers, electronic tachometers, total station laser distance meter, 36 volt battery drills, and data collector. Other testing and diagnostic equipment may be used if approved in advance by the District Manager. The petitioner states that:

(1) All other test and diagnostic equipment used within 150 feet of longwall faces and pillar workings will be permissible.

(2) All nonpermissible testing and diagnostic equipment used within 150 feet of longwall faces and pillar workings will be examined, by a qualified person as defined in 30 CFR 75.153, prior to being used to insure the equipment is being maintained in a safe operating condition. The examination results will be recorded in the weekly examination book and will be made available to an authorized representative of the Secretary and the miners at the mine.

(3) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during use of nonpermissible electronic testing and diagnostic equipment within 150 feet of the longwall faces and pillar workings.

(4) Nonpermissible electronic test and diagnostic equipment will not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more of methane is detected while the nonpermissible electronic equipment is being used, the equipment will be deenergized immediately, and the nonpermissible electronic equipment will be withdrawn to outby the last open crosscut.

(5) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(6) Except for time necessary to trouble shoot under actual mining conditions, coal production in the section will cease during use of the nonpermissible equipment. However, coal may remain in or on the equipment to test and diagnose the equipment under "load".

(7) Nonpermissible electronic testing and diagnostic equipment will not be used to test equipment when float coal dust is in suspension.

(8) All electronic testing and diagnostic equipment will be used in accordance with the manufacturer's recommended safe use procedures.

(9) Qualified personnel engaged in the use of electronic testing and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with the use of electronic testing and diagnostic equipment.

(10) Nonpermissible electronic testing and diagnostic equipment will not be put into service underground until MSHA has initially inspected the equipment.

(11) Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and



refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

*Docket Number:* M-2013-012-M.

*Petitioner:* Carmeuse Lime & Stone—Luttrell Operation, 486 Clinch Valley Road, Luttrell, Tennessee 37779.

*Mine:* Chesney Underground Mine, MSHA I.D. No. 40-02113, located in Union County, Tennessee.

*Regulation Affected:* 30 CFR 57.11052(d) (Refuge areas).

*Modification Request:* The petitioner requests a modification of the existing standard to use a self-contained refuge chamber providing sufficient packaged water and aviation quality compressed air bottles to last no less than 48 hours for up to 20 miners. The petitioner states that:

(1) The unit contains enough air, water, and nutriment at prescribed levels to sustain occupants for 48 hours. The source of both air and water would not be dependent on exterior air and water lines, which are inherently susceptible to external physical damage and deliver a substandard quality product.

(2) The refuge chamber is constructed of airtight steel and designed to sustain up to 20 miners for a period of no less than 48 hours by provision of fresh air, water, and food. The unit is portable, providing the ability to relocate as necessary during the advancement of mine workings. The unit is equipped with lights, a siren, and a carbon dioxide scrubber. Battery backup power is provided in case of electrical outage, and will provide standby power. The unit will also be provided with a fire extinguisher.

(3) The ability to supply air, water, and reserve power within the refuge chamber itself reduces the susceptibility of the unit to damage from normal mining operations and conditions that may be found in an emergency where the severing of lines may be of concern. To ensure these stored supplies are readily available as needed, daily visual inspections will be performed to ensure that neither exterior damage nor unauthorized entry of the unit has occurred. Detailed monthly inspections will be performed to ensure supplies are within satisfactory expiration periods.

(4) The self-contained properties of the refuge chamber will additionally increase the portability of the unit, providing the flexibility to continuously install the unit closer to working areas of the mine, as appropriate, while

maintaining a sanitary environment for its occupants.

(5) The Chesney Mine employs approximately 88 people. The mine produces a high quality, non-gassy limestone that is used in the production of lime via one kiln located on site. Due to the deposit's approximate dip of 35 degrees, a non-traditional room and pillar design is used in which multiple levels are developed in a stepped pattern.

(6) Ordinarily, less than 20 miners are in the workings at any given moment. The operation uses 11 production miners and one supervisor on the day shift, and five production miners and one supervisor on the night shift. Three mechanical/electrical technicians may work in the mine on either shift and four additional managerial employees may be in the mine intermittently on an as needed basis. As the workings are readily accessible via a traversable slope and portal, the facility has not located office or maintenance shops underground. There is no established access to potable water or compressed air in the mine.

(7) The mine is naturally ventilated, and has no significant history of gas liberation. A 13-foot diameter airshaft and fan located atop the eastern portion of the mine, aid ventilation and is capable of exhausting approximately 160,000 cubic feet per minute. An assortment of auxiliary fans is used underground for localized air control. The mine also has a history of stable roof conditions and, while not required, installs 8-foot grouted roof bolts in a 5×5 foot pattern as part of the regular mining cycle.

(8) A water source delivered in any form of conduit of pipeline has the potential to be damaged in a geologic event or equipment activity. As pipes age, contamination is possible and stagnated water has the potential to deliver bacterial agents to the recipient. Air from the surface would require a compressor to deliver air to the chamber at an elevated pressure. Air from a compressor may be laden with water vapor and lubricants that may reduce its purity. An underground refuge chamber will be fitted with compressed air and sealed water provides remediation to both of these problems.

(9) Training on proper use of the refuge chamber will be provided for all affected personnel annually and additionally upon any relocation of the chamber.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure or protection afforded by the existing standard.

Dated: January 17, 2014.

**Patricia W. Silvey,**

*Certifying Officer.*

[FR Doc. 2014-01391 Filed 1-23-14; 8:45 am]

**BILLING CODE 4510-43-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2009-0035]

#### Standard on Ethylene Oxide; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Standard on Ethylene Oxide (EtO) (29 CFR 1910.1047). The standard protects workers from adverse health effects from occupational exposure to ethylene oxide.

**DATES:** Comments must be submitted (postmarked, sent, or received) by March 25, 2014.

#### ADDRESSES:

*Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693-1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA-2009-0035, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA-2009-0035) for the Information Collection Request (ICR). All comments, including any personal information you provide, are



placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

**Docket:** To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

#### FOR FURTHER INFORMATION CONTACT:

Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N-3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-2222.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA-95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 et seq.) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The EtO Standard specifies a number of paperwork requirements. The following is a brief description of the collection of information requirements contained in the standard.

The information collection requirements specified in the Ethylene Oxide Standard protect workers from the adverse health effects that may result from occupational exposure to ethylene oxide. The principal information collection requirements in the EtO Standard include conducting worker exposure monitoring, notifying workers of the exposure, implementing a written compliance program, and implementing medical surveillance of workers. Also, the examining physician must provide specific information to ensure that workers receive a copy of their medical examination results. The employer must maintain exposure-monitoring and medical records for specific periods, and provide access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected workers, and their authorized representatives and other designated parties.

##### II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

##### III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements specified in the Ethylene Oxide Standard. The Agency is requesting an overall adjustment decrease of 6,433 burden hours, from 41,484 to 35,051 burden hours. The decrease in burden hours is primarily due to the decrease in the number of hospital facilities, from 4,001 to 3,155 facilities. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB.

**Type of Review:** Extension of a currently approved collection.

**Title:** Standard on Ethylene Oxide (29 CFR 1910.1047).

**OMB Control Number:** 1218-0108.

**Affected Public:** Business or other for-profits.

**Number of Respondents:** 3,155.

**Frequency of Responses:** On occasion.

**Total Responses:** 204,878.

**Average Time per Response:** Varies from five minutes (.08 hour) for employers to maintain records to one hour for employers to update their compliance plans.

**Estimated Total Burden Hours:** 35,051.

**Estimated Cost (Operation and Maintenance):** \$5,910,696.

#### IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA-2009-0035). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov) Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available from this Web site and for assistance in using the Internet to locate docket submissions.

#### V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on January 17, 2014.

David Michaels,

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2014–01323 Filed 1–23–14; 8:45 am]

BILLING CODE 4510–26–P

#### DEPARTMENT OF LABOR

##### Occupational Safety and Health Administration

[Docket No. OSHA–2010–0064]

##### OSHA–7 Form ("Notice of Alleged Safety and Health Hazard"); Extension of the Office of Management and Budget's Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the OSHA–7 Form.

**DATES:** Comments must be submitted (postmarked, sent or received) by March 25, 2014.

**ADDRESSES:** *Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No.

OSHA–2010–0064, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., ET.

*Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2010–0064) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Docket:* To read or download comments or other materials in the docket, go to <http://regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publically available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Theda Kenney at the address below to obtain a copy of the ICR.

#### FOR FURTHER INFORMATION CONTACT:

Todd Owen or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3909, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., workers filing occupational safety or health complaints) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information

collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Under paragraphs (a) and (c) of 29 CFR 1903.11 ("Complaints by employees") workers and their representatives may notify the OSHA area director or an OSHA compliance officer of safety and health hazards regulated by the Agency that they believe exist in their workplaces at any time. These provisions state further that this notification must be in writing and "shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of the employee."

In addition to providing specific hazard information to the Agency, paragraph (a) permits workers/worker representatives to request an inspection of the workplace. Paragraph (c) also addresses situations in which workers/worker representatives may provide the information directly to the OSHA compliance officer during an inspection. An employer's former workers may also submit complaints to the Agency.

To address the requirements of paragraphs (a) and (c), especially the requirement that the information be in writing, the Agency developed the OSHA–7 Form; this form standardized and simplified the hazard reporting process. For paragraph (a), they may complete an OSHA–7 Form obtained from the Agency's Web site and then send it to OSHA online, or deliver a hardcopy of the form to the OSHA area office by mail or facsimile, or by hand. They may also write a letter containing the information and hand deliver it to the area office, or send it by mail or facsimile. In addition, they may provide the information orally to the OSHA area office or another party (e.g., a federal safety and health committee for federal workers), in which case the area office or other party completes the hard copy version of the form. For the typical situation addressed by paragraph (c), a worker/worker representative informs an OSHA compliance officer orally of the alleged hazard during an inspection, and the compliance officer then

completes the hard copy version of the OSHA-7 Form; occasionally, the worker/worker representative provides the compliance officer with the information on the hard copy version of the OSHA-7 Form.

The information on the hard copy version of the OSHA-7 Form includes information about the employer and alleged hazards, including: the establishment's name; the site's address and telephone and facsimile numbers; the name and telephone number of the management official; the type of business; a description and the specific location of the hazards, including the approximate number of workers exposed or threatened by the hazards; and whether or not the worker/worker representative informed another government agency about the hazards (and the name of the agency if so informed).

Additional information on the hard copy version of the form concerns the complainant including: whether or not the complainant is a worker or a worker representative, or for information provided orally, a member of a federal safety and health committee or another party (with space to specify the party); the complainant's name, telephone number, and address; and the complainant's signature attesting that they believe a violation of an OSHA standard exists at the named establishment; and the date of the signature. A worker representative must also provide the name of the organization they represent and their title.

The information contained in the online version of the OSHA-7 Form is similar to the hard copy version. However, the online version requests the complainant's email address, and does not ask for the site's facsimile number or the complainant's signature and signature date.

The Agency uses the information collected on the OSHA-7 Form to determine whether reasonable grounds exist to conduct an inspection of the workplace. The description of the hazards, including the number of exposed workers, allows the Agency to assess the severity of the hazards and the need to expedite the inspection. The completed form also provides the employer with notice of the complaint and may serve as the basis for obtaining a search warrant if the employer denies the Agency access to the workplace.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary

for proper performance of the Agency's functions, including whether the information is useful;

- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements relating to the OSHA-7 Form. The Agency is requesting an increase in burden hours from 13,414 to 13,659 (a total increase of 245 burden hours). The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

*Type of Review:* Extension of a currently approved collection.

*Title:* Notice of Alleged Safety and Health Hazards, OSHA-7 Form.

*OMB Control Number:* 1218-0064.

*Affected Public:* Individuals or households.

*Number of Responses:* 50,641.

*Frequency of Responses:* On occasion.

*Average Time per Response:* Varies from 15 minutes (.25 hour) to communicate the required information orally to the Agency to 25 minutes (.42 hour) to provide the information in writing and send it to OSHA.

*Estimated Total Burden Hours:* 13,659.

*Estimated Cost (Operation and Maintenance):* \$532

## IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

- (1) electronically at <http://regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other materials must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA-2010-0064). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice

titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publically available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

## V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1-2012 (77 FR 3912, January 25, 2012).

Signed at Washington, DC, on January 17, 2014.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2014-01357 Filed 1-23-14; 8:45 am]

**BILLING CODE 4510-26-P**

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****[Docket No. OSHA–2010–0042]****Gear Certification Standard; Extension of the Office of Management and Budget's Approval of Information Collection (Paperwork) Requirements****AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Gear Certification Standard (29 CFR part 1919).

**DATES:** Comments must be submitted (postmarked, sent, or received) by March 25, 2014.

**ADDRESSES:** *Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0042, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., ET.

*Instructions:* All submissions must include the Agency name and the OSHA docket number for the Information Collection Request (ICR) (OSHA–2010–0042). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the “Public Participation” heading in the section of this notice titled “**SUPPLEMENTARY INFORMATION**”.

*Docket:* To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the

address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:**

Theda Kenney or Todd Owen,  
Directorate of Standards and Guidance,  
OSHA, U.S. Department of Labor, Room  
N–3609, 200 Constitution Avenue NW.,  
Washington, DC 20210; telephone (202)  
693–2222.

**SUPPLEMENTARY INFORMATION:****I. Background**

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The ICR addresses the burden hours associated with gathering information to complete the OSHA 70 Form. The OSHA 70 Form is used by applicants seeking accreditation from OSHA to be able to test or examine certain equipment and material handling devices as required under the maritime regulations, part 1917 (Marine Terminals), and part 1918 (Longshoring). The OSHA 70 Form application for accreditation provides

an easy means for companies to apply for accreditation.

**II. Special Issues for Comment**

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

**III. Proposed Actions**

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Gear Certification (29 CFR part 1919). The Agency is requesting an adjustment decrease in the number of burden hours from 190 hours to 184 hours, a total decrease of 6 burden hours. The decrease is based on updated data on the number of OSHA 70 forms submitted. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

*Type of Review:* Extension of a currently approved collection.

*Title:* Gear Certification Standard (29 CFR part 1919); OSHA 70 Form.

*OMB Control Number:* 1218–0003.

*Affected Public:* Business or other for-profits.

*Number of Respondents:* 45.

*Frequency of Responses:* On occasion; Monthly.

*Total Responses:* 6,357.

*Average Time per Response:* Varies from 1 minute (.02 hour) for an employer to disclose the OSHA 70 Form to an OSHA Compliance Officer during an inspection to 45 minutes (.75 hour) for a prospective accredited agency to complete the form.

*Estimated Total Burden Hours:* 184.

*Estimated Cost (Operation and Maintenance):* \$2,878,090.

**IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions**

You may submit comments in response to this document as follows:

- (1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by

facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA-2010-0042). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled “ADDRESSES”). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627.

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's “User Tips” link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

## V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1-2012 (77 FR 3912, January 25, 2012).

Signed at Washington, DC, on January 17, 2014.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2014-01358 Filed 1-23-14; 8:45 am]

**BILLING CODE 4510-26-P**

## NATIONAL SCIENCE FOUNDATION

### Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

**NAME:** Committee on Equal Opportunities in Science and Engineering (CEOSE) Advisory Committee Meeting (1173)

**DATES/TIME:** February 11, 2014, 1 p.m.–5:30 p.m. February 12, 2014, 9 a.m.–3:30 p.m.

**PLACE:** National Science Foundation (NSF), 4201 Wilson Boulevard, Arlington, VA 22230

To help facilitate your entry into the building, contact the individual listed below. Your request to attend this meeting should be received by email ([gfarves@nsf.gov](mailto:gfarves@nsf.gov)) on or prior to February 7, 2014.

**TYPE OF MEETING:** Open

**CONTACT PERSON:** Dr. Bernice Anderson, Senior Advisor and CEOSE Executive Secretary, Office of International and Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone Numbers: (703) 292-5151/703-292-8040 [banderso@nsf.gov](mailto:banderso@nsf.gov)

**MINUTES:** Meeting minutes and other information may be obtained from the CEOSE Executive Secretary at the above address or the Web site at <http://www.nsf.gov/od/iaa/activities/ceose/index.jsp>

**PURPOSE OF MEETING:** To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

**AGENDA:** Opening Statement by the CEOSE Chair

#### PRESENTATIONS AND DISCUSSIONS:

- Delivery of the 2011–2012 Biennial CEOSE Report
- Discussion of Key Points from the Meetings with the National Science Foundation Acting Director and/or CEOSE officers

- Update of Broadening Participation Activities by the CEOSE Executive Liaison

- Reports of CEOSE Liaisons to NSF Advisory Committees

- Interdisciplinarity and Inclusion
- International Engagement
- Discussion by Federal Agency Liaisons About Interagency Broadening Participation Activities

- Transparency and Accountability
- Panel Discussion about the

Significance of Financial Support for Underrepresented Groups in STEM

- Discussion with Dr. Cora B. Marrett, Acting Director of the National Science Foundation

Discussion of CEOSE Unfinished Business and New Business

Dated: January 17, 2014.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 2014-01324 Filed 1-23-14; 8:45 am]

**BILLING CODE 7555-01-P**

## POSTAL REGULATORY COMMISSION

[Docket No. ACR2013; Order No. 1972]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is adjusting its approach to issuing a report on the Postal Service's Performance Report and Performance Plan. Previously, the Commission has included its report as part of the Annual Compliance Determination. Starting with FY 2013, the Commission will issue this report as a separate document. This order addresses related administrative steps and invites public comments.

**DATES:** *Comments are due:* March 10, 2014. *Reply comments are due:* March 20, 2014.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** Brian Corcoran, Acting General Counsel, at 202-789-6820.

**SUPPLEMENTARY INFORMATION:** Each fiscal year (FY), the Postal Service is required to prepare an annual performance plan (Performance Plan) and a report on program performance (Performance Report) pursuant to 39 U.S.C. 2803 and 2804. Pursuant to 39 U.S.C. 3652(g), on

December 27, 2013, the Postal Service filed the FY 2013 Performance Report and FY 2014 Performance Plan with the Commission along with its FY 2013 Annual Compliance Report. See library reference USPS–FY13–17.<sup>1</sup>

The Commission is required to evaluate whether the Postal Service has met the goals established in its FY 2013 Performance Report and FY 2014 Performance Plan. See 39 U.S.C. 3653(d). It may also provide recommendations to the Postal Service “related to the protection or promotion of public policy objectives set out in” title 39. *Id.* In past years, the Commission’s analysis of Performance Plans and Performance Reports have been included in its Annual Compliance Determination (ACD).<sup>2</sup> Since the Commission’s obligations under section 3653(d) are distinguishable from its annual compliance determination obligations under section 3653(b), the Commission has determined that, beginning with FY 2013, it will issue a separate report on the Postal Service’s Performance Report and Performance Plan. The Commission anticipates issuing that report early in May 2014.

To accommodate that schedule, the Commission is establishing a separate comment period for the FY 2013 Performance Report and FY 2014 Performance Plan. Comments by interested persons are due no later than by March 10, 2014. Reply comments are due no later than March 20, 2014.

Kenneth E. Richardson, previously designated to serve as the Public Representative in this proceeding, will continue in that capacity.

*It is ordered:*

1. Comments on the Postal Service’s FY 2013 Performance Report and FY 2014 Performance Plan are due no later than March 10, 2014.

2. Reply comments are due no later than March 20, 2014.

3. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2014–01381 Filed 1–23–14; 8:45 am]

**BILLING CODE 7710–FW–P**

<sup>1</sup> The FY 2013 Performance Report and FY 2014 Performance Plan are included in the Postal Service’s 2013 Annual Report to Congress.

<sup>2</sup> See, e.g., Docket No. ACR2012, Annual Compliance Determination Report Fiscal Year 2012 at 35–46.

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2014–16 and CP2014–25; Order No. 1970]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing requesting the addition of Priority Mail Contract 75 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* January 24, 2014.

**ADDRESSES:** Submit comments electronically via the Commission’s Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

### FOR FURTHER INFORMATION CONTACT:

Brian Corcoran, Acting General Counsel, at 202–789–6820.

### SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Notice of Filings
- III. Ordering Paragraphs

#### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a request and associated supporting information to add Priority Mail Contract 75 to the competitive product list.<sup>1</sup> The Postal Service asserts that Priority Mail Contract 75 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2014–16.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2014–25.

*Request.* To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors’ Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;

- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;

- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;

- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs and increase contribution toward the requisite 5.5 percent of the Postal Service’s total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

*Related contract.* The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective one business day following the day on which the Commission issues all necessary regulatory approval. *Id.* at 5. The contract will expire three years from the effective date unless, among other things, either party terminates the agreement upon 30 days’ written notice to the other party or the contract is renewed by mutual written agreement. *Id.* The contract also allows two 90-day extensions of the agreement if the preparation of a successor agreement is active and the Commission is notified within at least seven days of the contract’s expiration date. *Id.* at 6. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a).<sup>2</sup>

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors’ Decision, contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer’s mailing profile, and cost coverage projections. *Id.* The Postal Service asks

<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 75 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors’ Decision, Contract, and Supporting Data, January 16, 2014 (Request).

<sup>2</sup> Although the Request appears to state that the certification only pertains to paragraphs (1) and (3) of 39 U.S.C. 3633(a), the certification itself contains an assertion that the prices are in compliance with 39 U.S.C. 3633(a)(1), (2), and (3). See Request at 2; Attachment E.

the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

## II. Notice of Filings

The Commission establishes Docket Nos. MC2014–16 and CP2014–25 to consider the Request pertaining to the proposed Priority Mail Contract 75 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than January 24, 2014. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Pamela A. Thompson to serve as Public Representative in these dockets.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2014–16 and CP2014–25 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Pamela A. Thompson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than January 24, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**  
*Acting Secretary.*

[FR Doc. 2014–01378 Filed 1–23–14; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2014–17 and CP2014–26;  
Order No. 1971]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing requesting the addition of Priority Mail Contract 76 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* January 24, 2014.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** Brian Corcoran, Acting General Counsel, at 202–789–6820.

### SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Notice of Filings
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#### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a request and associated supporting information to add Priority Mail Contract 76 to the competitive product list.<sup>1</sup> The Postal Service asserts that Priority Mail Contract 76 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2014–17.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2014–26.

*Request.* To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and

Contracts, asserts that the contract will cover its attributable costs and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

*Related contract.* The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective one business day following the day on which the Commission issues all necessary regulatory approval. *Id.* at 3. The contract will expire three years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party or the contract is renewed by mutual written agreement. *Id.* The contract also allows two 90-day extensions of the agreement if the preparation of a successor agreement is active and the Commission is notified within at least seven days of the contract's expiration date. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a).<sup>2</sup>

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

## II. Notice of Filings

The Commission establishes Docket Nos. MC2014–17 and CP2014–26 to consider the Request pertaining to the proposed Priority Mail Contract 76 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than

<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 76 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, January 16, 2014 (Request).

<sup>2</sup> Although the Request appears to state that the certification only pertains to paragraphs (1) and (3) of 39 U.S.C. 3633(a), the certification itself contains an assertion that the prices are in compliance with 39 U.S.C. 3633(a)(1), (2), and (3). See Request at 2; Attachment E.



January 24, 2014. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2014–17 and CP2014–26 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than January 24, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**  
*Acting Secretary.*

[FR Doc. 2014–01380 Filed 1–23–14; 8:45 am]

**BILLING CODE 7710–FW–P**

### POSTAL SERVICE

#### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* January 24, 2014.

**FOR FURTHER INFORMATION CONTACT:**  
Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on January 16, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 75 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2014–16, CP2014–25.

**Stanley F. Mires,**  
*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2014–01383 Filed 1–23–14; 8:45 am]

**BILLING CODE 7710–12–P**

### POSTAL SERVICE

#### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective Date:* January 24, 2014.

**FOR FURTHER INFORMATION CONTACT:**  
Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on January 16, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 76 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2014–17, CP2014–26.

**Stanley F. Mires,**  
*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2014–01384 Filed 1–23–14; 8:45 am]

**BILLING CODE 7710–12–P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71344; File No. SR–BOX–2014–02]

#### Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Rule Change To Amend BOX Rule 8130

January 17, 2014.

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 January 6, 2014, BOX Options Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

<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 Exchange proposes to amend BOX Rule 8130 (Automatic Quote Cancellation) to require Market Makers to enter values in at least one of the Exchange-provided risk parameters. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://boxexchange.com>.

#### 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 proposes to amend BOX Rule 8130 (Automatic Quote Cancellation) to require Market Makers<sup>3</sup> to enter values in at least one of the Exchange-provided risk parameters. This is a competitive filing based on a proposal recently submitted by the International Securities Exchange, LLC (“ISE”) and approved by the Commission.<sup>4</sup>

BOX Rule 8040 (Obligations of Market Makers) requires Market Makers to enter and maintain continuous quotations for the options classes to which they are appointed. This requirement creates a possibility of “rapid fire” executions that could result in large and unintended principal positions and expose the Market Maker to unnecessary market risk. To lessen this risk, many

<sup>3</sup> As defined in BOX Rule 100 (a)(30), the term “Market Maker” means an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in the Rule 8000 Series. All Market Makers are designated as specialists on the Exchange for all purposes under the Exchange Act or Rules thereunder.

<sup>4</sup> See Securities Exchange Act Release No. 70132 (August 7, 2013), 78 FR 49311 (August 13, 2013) (Order Approving SR–ISE–2013–38).



Market Makers employ their own proprietary quotation and risk management systems to determine the prices and sizes at which they quote. Additionally, under the current BOX Rule 8130 the Exchange offers Market Makers the ability to automatically cancel quotes in specified classes if certain triggering parameters are met.<sup>5</sup> When enabled, these triggering parameters can help Market Makers manage their risk and protect them from a "rapid fire" execution scenario.

Specifically, under BOX Rule 8130 there are five triggering parameters that Market Makers can enable on a class-by-class basis. These are when the Market Maker: (1) Experiences a duration of no technical connectivity for between one and nine seconds; (2) trades a specified number of contracts in the aggregate across all series of an options class; (3) trades a specified absolute dollar value of contracts bought and sold in a class; (4) trades a specified number of contracts in a class of the net between (i) calls purchased plus puts sold, and (ii) calls sold and puts purchased; or, (5) trades a specified absolute dollar value of the net position in a class between (i) calls purchased and sold, (ii) puts and calls purchased; (iii) puts purchased and sold; or (iv) puts and calls sold.

The risk to Market Makers is not limited to a single option series. Market Makers have exposure in all series of a particular options class in which they are appointed, requiring them to offset or hedge their overall position in each option to minimize risk. By limiting a Market Maker's exposure across series, the Exchange believes that a Market Maker is able to provide quotations at better prices. The Exchange believes that the Exchange-provided risk parameters help Market Makers, as key liquidity providers, to better manage their risk, aiding them in providing deeper and more liquid markets, beneficial to all Participants.

Under Rule 8130, Market Makers are currently not required to use the Exchange-provided risk parameters and can program their own systems to perform similar functions if they prefer. The Exchange proposes to amend Rule 8130 to prevent Market Makers from inadvertently entering quotes without any internal or external risk-management parameters. Specifically, the Exchange proposes to make it mandatory for a Market Maker to enter values in at least one triggering parameter for each of their appointed

options classes. The Exchange is not proposing to require values be entered for all five triggering parameters, as the Exchange is aware that Market Makers have different internal risk control mechanisms and therefore will use the tool differently. Additionally, Market Makers that currently use this feature have elected to use different parameters based on their specific needs.

While entering values into at least one of the risk parameters will now be mandatory to prevent an inadvertent exposure to risk, Market Makers who prefer to use their own risk-management systems can enter values that will ensure the Exchange-provided parameters will not be triggered.<sup>6</sup> Accordingly, the proposal does not require members to manage their risk using the Exchange-provided tools.

The Exchange notes that nothing under this proposed rule change relieves a Market Maker of its obligations to provide continuous, two sided quotes under Rule 8050.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>7</sup> in general, and Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 requiring Market Makers to enter values for at least one of the triggering parameters will not be unreasonably burdensome, as Market Makers who prefer to use their own risk-management systems can enter out-of-range values so that the Exchange-provided parameters will not be triggered. Moreover, the Exchange is proposing this rule change in order to reduce the risk of a Market Maker inadvertently entering quotes without populating any of the triggering parameters. Reducing such risk will enable Market Makers to enter quotations with larger size, which in

turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they receive better prices and because it lowers volatility in the options market.

## 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. In this regard and as indicated above, the Exchange notes that the proposed rule change is substantially similar to a filing submitted by ISE that was recently approved by the Commission.<sup>9</sup> The proposal is meant to help Market Makers manage risk by preventing the inadvertent entry of quotes without any risk-management parameters, whether internal or external. As noted above, Market Makers who prefer to use their own risk-management systems can enter out-of-range values so that the Exchange-provided parameters will not be triggered. Accordingly, the proposal does not require members to manage their risk using this feature.

## 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 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)(ii) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to

<sup>9</sup> See *supra*, note 4.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). 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>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 55472 (March 14, 2007), 72 FR 13322 (March 21, 2007) (Notice of Filing and Immediate Effectiveness of SR-BSE-2007-08).

<sup>6</sup> For example, a Market Maker could set the value for the total number of contracts in the aggregate across all series of an options class at a level that exceeds the total aggregate number of contracts that the Market Maker actually quotes in all the series of the option class.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

Rule 19b-4(f)(6)(iii)<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay. The Exchange stated that waiver of the operative delay will allow the Exchange to quickly adopt an additional risk protection feature for Market Makers.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because the Exchange will be able to implement promptly an amended automatic quote cancellation feature that will require a Market Maker to enter values for at least one of the triggering parameters, and thus the proposal may help Market Makers mitigate their quoting risk exposure.<sup>14</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-BOX-2014-02 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BOX-2014-02. 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-BOX-2014-02 and should be submitted on or before February 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-01398 Filed 1-23-14; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71347; File No. SR-CBOE-2014-002]

#### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Exchange's Quote Risk Monitor Mechanism**

January 17, 2014.

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 January 15, 2014, Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 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 its Quote Risk Monitor Mechanism. 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, at the Commission's Public Reference Room, and on the Commission's Web site (<http://www.sec.gov>).

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The operation of the Exchange's Quote Risk Monitor ("QRM") Mechanism is codified in Rule 8.18. The purpose of this proposed rule change is to add three new functions to QRM Mechanism to help Hybrid Market-Makers (as defined in Rule 8.18) and TPH organizations control the risk of multiple, nearly-simultaneous executions across related option series. The use of the new functions is voluntary. The proposed rule change also makes clear that the TPH organization with which a Hybrid Market-Maker is associated (as well as the Hybrid Market-Maker himself) may establish parameters by which the Exchange will activate the QRM Mechanism for the Hybrid Market-Maker (the current rule text only explicitly permits Hybrid Market-Makers to establish such parameters). The Exchange also proposes to make some changes to the Rule 8.18 text to

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> As noted by the Exchange above, Market Makers who prefer to use their own risk-management systems can enter out-of-range values so that the Exchange-provided parameters will not be triggered. Thus, the proposal does not require members to manage their risk using the Exchange's automatic quote cancellation feature.

<sup>15</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.

make such rule more readable in conjunction with the other changes proposed herein.<sup>3</sup>

The first new function available to Hybrid Market Makers allows each Hybrid Market-Maker the ability to specify a maximum cumulative percentage that the Hybrid Market-Maker is willing to trade (the "Cumulative Percentage Limit"). Under the proposal, the cumulative percentage is the sum of the percentages of the original quoted size of each side of each series within a class that traded, and a rolling time period in milliseconds within which such Cumulative Percentage Limit is to be measured (the "Measurement Interval"). When the QRM Mechanism determines that the Hybrid Market-Maker has traded at least the Cumulative Percentage Limit for any option class on a trading platform during any rolling Measurement Interval, the QRM Mechanism will automatically cancel all of the electronic quotes being disseminated on that trading platform with respect to that Hybrid Market-Maker in that option class and any other classes with the same underlying security until the Hybrid Market-Maker refreshes those electronic quotes.<sup>4</sup>

<sup>3</sup> Specifically, the Exchange proposes to amend the beginning of the second sentence of Rule 8.18, which reads "Hybrid Market-Makers that use the QRM Mechanism shall specify, for each such option class in which the Hybrid Market-Maker is engaged in trading, a maximum number of contracts for such option class (the "Contract Limit") and a rolling time period in seconds within which such Contract Limit is to be measured (the "Measurement Interval");" to read: "The functionality of the QRM Mechanism that is available to Hybrid Market-Makers includes, for each such option class in which the Hybrid Market-Maker is engaged in trading: (i) A maximum number of contracts for such option class (the "Contract Limit") and a rolling time period in milliseconds within which such Contract Limit is to be measured (the "Measurement Interval");". The Exchange's systems will allow Hybrid Market-Makers to set the Measurement Interval in milliseconds (as opposed to seconds), so the Exchange proposes to provide this more precise option to Hybrid Market-Makers.

<sup>4</sup> The Exchange also proposes to delete the words "more than" from the specification that "When the Exchange determines that the Hybrid Market-Maker has traded more than the Contract Limit or Cumulative Percentage Limit for such option class on a trading platform during any rolling Measurement Interval, or has traded at least the Number of Series Fully Traded on a trading platform during any rolling Measurement Interval, the QRM Mechanism shall cancel all electronic quotes that are being disseminated on the same trading platform with respect to that Hybrid Market-Maker in that option class and any other classes with the same underlying security until the Hybrid Market-Maker refreshes those electronic quotes" and replace "more than" with the words "at least". This is because the QRM Mechanism is triggered (and quotes are canceled) at the moment when the Hybrid Market-Maker trades the Contract Limit or Cumulative Percentage Limit (as opposed to when the Hybrid Market-Maker has traded more than Contract Limit or Cumulative Percentage Limit).

By way of example, assume a Hybrid Market-Maker is quoting the following series:

- Series A Quote: 1.00—1.20 50 × 50
- Series B Quote 2.00—2.20 75 × 75
- Series C Quote 3.00—3.20 100 × 100

If the Cumulative Percentage Limit is set at 150% for the Hybrid Market-Maker and an order to buy 40 contracts of Series A is received, the series percentage would be 80% (*i.e.*, 40/50). The cumulative percentage would also be 80%. If a second order to sell 25 contracts of Series B is received, the series percentage would be 33% (*i.e.*, 25/75). The cumulative percentage would now be 113% (*i.e.*, 80 + 33 = 113). If a third order to buy 70 contracts of Series C is received, the series percentage would be 70% (*i.e.*, 70/100). The cumulative percentage would now be 183% (*i.e.*, 113 + 70 = 183). Since 183% exceeds the Cumulative Percentage Limit of 150%, the Hybrid Market-Maker's quotes in the class, and any class on the same trading platform with the same underlying security, would be cancelled. This cancellation, however, would not occur until after execution of the third order. Due to firm quote obligations rules, the QRM Mechanism will not cancel quotes (and in the case of an Exchange-wide QRM Incident, orders) until after the execution of the order that caused the triggering of the QRM Mechanism. Note that percentages are added to one another, regardless of the denominator.

Percentages are also calculated based on the original quote size, not the remaining quote size. Using the quotes set forth above as an example, if an order to buy 40 contracts of Series A is received, the series percentage would be 80% (*i.e.*, 40/50). The cumulative percentage would also be 80%. If a second order to sell 25 contracts of Series B is received, the series percentage would be 33% (*i.e.*, 25/75). The cumulative percentage would then be 113% (*i.e.*, 80 + 33 = 113). If a third order to buy 10 contracts of Series A is received, the series percentage would be 20% (*i.e.*, 10/50). The cumulative percentage would then be 133% (*i.e.*, 113 + 20 = 133). If a fourth order to buy 70 contracts of Series C is received, the series percentage would be 70% (*i.e.*, 70/100). The cumulative percentage would then be 203% (*i.e.*, 133 + 70 = 203).

The proposed rule change adds a second new function to the QRM Mechanism that would allow each Hybrid Market-Maker to specify the

maximum number of series for which either side of the quote is fully traded (the "Number of Series Fully Traded") and a Measurement Interval. When the QRM Mechanism determines that the Hybrid Market-Maker has traded at least the Number of Series Fully Traded for any option class on a trading platform during any rolling Measurement Interval, the QRM mechanism will automatically cancel all of the Hybrid Market-Maker's electronic quotes being disseminated on the same trading platform in that option class and any other classes with the same underlying security until the Hybrid Market-Maker refreshes those electronic quotes.

To illustrate this functionality, assume that a Hybrid Market-Maker is quoting the following series:

- Series A Quote: 1.00—1.20 50 × 50
- Series B Quote 2.00—2.20 75 × 75
- Series C Quote 3.00—3.20 100 × 100

If the Number of Series Fully Traded is set at two, and an order to buy 50 contracts of Series A is received, the number of series traded in full will be one. If a second order to sell 25 contracts of Series B is received, the number of series traded in full will still be one because Series B did not trade in full. If a third order to buy 100 contracts of Series C is received, the number of series traded in full will then be two. Since two meets the parameter set for Number of Series Fully Traded, the Hybrid Market-Maker's quotes on that trading platform in that class (and any other classes with the same underlying security traded on that trading platform) would be cancelled.

Whenever one of the QRM functions (*i.e.*, Contract Limit, Cumulative Percentage Limit or Number of Series Fully Traded) has been triggered and the QRM Mechanism automatically cancels all of the Hybrid Market-Maker's electronic quotes in all series of that option class traded on that trading platform (and any other classes with the same underlying security traded on that trading platform), such action by the Exchange shall be termed a "QRM Incident". Both of the new functionalities described above (along with the already-existing Contract Limit QRM functionality) are optional and Hybrid Market-Makers are not required to set parameters for the aforementioned QRM Mechanism functions.

The Exchange has above proposed that, when the QRM Mechanism automatically cancels all of a Hybrid Market-Maker's electronic quotes in an option class, the Exchange will also cancel all of the Hybrid Market-Maker's electronic quotes in any other classes with the same underlying security. The

The Exchange also proposes to delete the words "that are" from the above statement for reasons of grammatical simplicity.

purpose of this is because the risk involved in trading beyond a Market-Maker's risk profile extends to classes that have the same underlying security (since often the only difference between such classes is the multiplier of number of units of the underlying security).

However, the Exchange has also limited cancellation of quotes to those being disseminated on the same trading platform. When a Hybrid Market-Maker has traded at least the Contract Limit or Cumulative Percentage Limit, on an option class on a trading platform during any rolling Measurement Interval, or has traded the Number of Series Fully Traded on an option class on a trading platform during any rolling Measurement Interval, the QRM Mechanism shall cancel all electronic quotes being disseminated on the same trading platform. This qualification is proposed because of the Exchange's SPX options class. SPX options (and QIXs on the S&P 500) are traded on the Exchange's Hybrid 3.0 platform, while SPX options with End-of-Week expiration ("SPXW") trade on the Exchange's Hybrid platform. The Exchange believes that the differences between trading on the two platforms are such that a Market-Maker exceeding his risk profile trading on one platform will not necessarily mean that the Market-Maker will have exceeded his risk profile on the other platform. This will also allow a Market-Maker to set different QRM limits on SPX and SPXW.

Finally, the proposed amendment adds a third function that allows the Exchange to cancel all quotes and orders of a Hybrid Market-Maker or TPH Organization once a specified number of QRM Incidents has been reached. Under this proposed functionality, a Hybrid Market-Maker or a TPH organization may specify a maximum number of QRM Incidents with respect to all QRM Functions (*i.e.*, Contract Limit, Cumulative Percentage Limit and Number of Series Fully Traded) and a Measurement Interval on an Exchange-wide basis. When the Exchange determines that such Hybrid Market-Maker or TPH organization has reached its QRM Incident limit during any rolling Measurement Interval, the QRM Mechanism shall cancel all of the Hybrid Market-Maker's or TPH organization's electronic quotes and Market-Maker orders resting in the Book in all option classes on the Exchange and prevent a Hybrid Market-Maker or TPH organization from sending additional quotes or orders to the Exchange until the Hybrid Market-Maker or TPH organization reactivates

its ability to send quotes or orders in a manner prescribed by the Exchange.<sup>5</sup>

Once the QRM Mechanism is triggered and quotes (and in the case of an Exchange-wide cancellation, orders) are cancelled, all counters that determine whether the QRM Mechanism is triggered and a QRM Incident occurs will be reset for all classes for which quotes (and in the case of an Exchange-wide cancellation, orders) were canceled for all parties for whom such quotes (and in the case of an Exchange-wide cancellation, orders) were canceled. This means that, if the QRM Mechanism is triggered due to a party's reaching the Contract Limit, Cumulative Percentage Limit, or Number of Series Fully Traded for a class, and quotes (and in the case of an Exchange-wide cancellation, orders) are canceled, the number of contracts traded in all classes for which quotes and orders were canceled would be reset to zero, the cumulative percentage for all classes for which quotes and orders were canceled would be reset to zero, and the number of series that are fully traded for all classes for which quotes and orders were canceled would be reset to zero. If the Exchange cancels all of the Hybrid Market-Maker's or TPH organization's electronic quotes and Market-Maker orders resting in the Book, and the Hybrid Market-Maker or TPH organization does not reactivate its ability to send quotes or orders, the block will be in effect only for the trading day that the Hybrid Market-Maker or TPH organization reached its QRM Incident limit.

As with the Contract Limit, Cumulative Percentage Limit or Number of Series Fully Traded QRM functions, Hybrid Market-Makers and TPH organizations are not required to set parameters for the Exchange-wide QRM. All QRM Mechanism functionalities are currently optional.

The Exchange represents that it has the systems capacity to permit the operation of these enhanced QRM Mechanism functions. The Exchange does note that, in a situation in which the QRM Mechanism is triggered, and quotes (and in the case of an Exchange-wide cancellation, orders) must be canceled for multiple classes related to the same underlying security or across

multiple business clusters,<sup>6</sup> it may take a brief period for such cancellation to occur (during which period orders may execute against such quotes and orders; this functionality will not violate the Exchange's firm quote rules). The Exchange will use best efforts to cancel such quotes and orders as rapidly as possible.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</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 believes that investors and market participants will benefit from the proposed new functionality of the QRM Mechanism. Hybrid Market-Makers are vulnerable to the risk that, through an error in pricing or due to market events, they will receive multiple, automatic executions at disadvantageous or erroneous prices before they can adjust their quotes. Without adequate risk management tools such as the QRM, Hybrid Market-Makers could widen their quotes, quote less aggressively or limit their quote size. Such actions may undermine the quality of the markets available to customers and other market participants.

Accordingly, with the enhancements proposed by the Exchange to QRM, the use of the QRM Mechanism will encourage more aggressive and narrower quoting, thereby removing impediments to and perfecting the mechanism of a

<sup>5</sup> The Exchange will announce such manner to Trading Permit Holders via Regulatory Circular. The current plan for such reactivation is for the Hybrid Market-Maker or TPH Organization to contact the Exchange's Help Desk to request reactivation, though the Exchange is examining the possibility of creating a systematized manner for Hybrid Market-Makers or TPH Organizations to reactivate.

<sup>6</sup> The Exchange's systems group various classes into different business clusters for systems purposes.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> *Id.*

free and open market and a national market system, and, in general, more effectively protecting investors and the public interest. In addition, providing Market-Makers with more tools for managing risk will facilitate transactions in securities because, as noted above, the quotes of market makers will be more reliable and could help prevent erroneous orders and transactions. As a result, the new functionality for the QRM Mechanism has the potential to promote just and equitable principles of trade. Also, the proposed changes do not change to whom any aspects of the QRM Mechanism applies, as the proposed changes apply to all market participants to whom the QRM Mechanism previously applied.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the functions of the QRM mechanism help promote fair and orderly markets.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the use of the QRM Mechanism including the new enhancements is voluntary. Further, the proposed changes do not change to whom any aspects of the QRM Mechanism applies, as the proposed changes apply to all market participants to whom the QRM Mechanism previously applied. Similarly, the Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, again, the use of the QRM Mechanism including the new enhancements is voluntary. Moreover, the proposed enhancements to the QRM Mechanism apply only to trading on CBOE. To the extent that the proposed changes may make CBOE a more attractive trading venue for market participants on other exchanges, such market participants may elect to become CBOE market participants.

#### *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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

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.

### **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-CBOE-2014-002 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2014-002. This file number should be included on the

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-CBOE-2014-002 and should be submitted on or before February 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-71352; File No. SR-NASDAQ-2014-005]**

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change With Respect to the Composition of NASDAQ Basic**

January 17, 2014.

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 January 9, 2014, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission")

<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.

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 is filing a proposal to modify the language of NASDAQ Rule 7047 to establish that the NASDAQ Basic market data product currently includes and has, since its inception, included last sale transaction reports from the FINRA/NASDAQ Trade Reporting Facility ("TRF"). The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

\* \* \* \* \*

#### **7047. NASDAQ Basic**

(a) NASDAQ shall offer proprietary data feeds containing real-time market information from the NASDAQ Market Center and the FINRA/NASDAQ Trade Reporting Facility ("TRF").

(1) "NASDAQ Basic for NASDAQ" shall contain NASDAQ's best bid and offer and last sale for NASDAQ-listed stocks from NASDAQ and the FINRA/NASDAQ TRF; and

(2) "NASDAQ Basic for NYSE" shall contain NASDAQ's best bid and offer and last sale for NYSE-listed stocks from NASDAQ and the FINRA/NASDAQ TRF.

(3) "NASDAQ Basic for [Alternext] NYSE MKT" shall contain NASDAQ's best bid and offer and last sale for [Alternext] NYSE MKT-listed stocks from NASDAQ and the FINRA/NASDAQ TRF.

(b) User Fees

(1) Except as provided in (b)(2) and (b)(3), for the NASDAQ Basic product there shall be a per subscriber monthly charge of \$10 for NASDAQ-listed stocks, \$5 for NYSE-listed stocks, and \$5 for [Alternext] NYSE MKT-listed stocks; or

(2) For each non-professional subscriber, as defined in Rule 7011(b), there shall be a per subscriber monthly charge of \$0.50 for NASDAQ-listed stocks, \$0.25 for NYSE-listed stocks, and \$0.25 for [Alternext] NYSE MKT-listed stocks; or

(3) There shall be a per query fee for NASDAQ Basic of \$0.0025 for NASDAQ-listed stocks, \$0.0015 for NYSE-listed stocks, and \$0.0015 for [Alternext] NYSE MKT-listed stocks.

(4) No change.

(c) No change.

\* \* \* \* \*

### **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**

In June of 2008, NASDAQ received Commission approval to offer the NASDAQ Last Sale ("NLS") market data product on a pilot basis. NLS is a non-core market data product designed for distribution through internet portals and broadcast television, as well as distribution to individuals that access the data via a username/password-identified account and/or quote-counting mechanisms.<sup>3</sup> NLS includes two data elements: (1) Last sale transaction reports from the NASDAQ Market Center, and (2) last sale transaction reports from the FINRA/NASDAQ TRF.<sup>4</sup> Based upon information from NLS distributors, NASDAQ believes that since its launch in 2008, the NLS data has been viewed by millions of investors, and that the NLS product has greatly increased the availability of market data to investors.

In March of 2009, NASDAQ received Commission approval for a pilot to offer NASDAQ Basic, another non-core market data product.<sup>5</sup> As originally proposed, the NASDAQ Basic product was to provide two data feeds: (1) A feed carrying the best bid and offer on

<sup>3</sup> See Securities Exchange Act Release No. 57964 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR-NASDAQ-2006-060). NASDAQ has renewed the Last Sale Pilot continuously since 2008, most recently in December 2013. Securities Exchange Act Release No. 71217 (December 31, 2013), 79 FR 875 (January 7, 2014) (SR-NASDAQ-2013-162).

<sup>4</sup> See NASDAQ Rule 7039.

<sup>5</sup> Securities Exchange Act Release No. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (SR-NASDAQ-2008-102) (finding pilot to be consistent with Sections 6(b)(4), (5) and (8) of the Act and Rule 603(a) under Regulation NMS). See also Securities Exchange Act Release No. 59933 (May 15, 2009), 74 FR 24889 (May 26, 2009) (SR-NASDAQ-2009-208) (finding reduction in fees for NASDAQ Basic to be consistent with Sections 6(b)(4), (5) and (8) of the Act and Rule 603(a) under Regulation NMS).

the NASDAQ Market Center, and (2) a feed containing NLS which, as noted above, carries last sale transaction reports from NASDAQ and from the FINRA/NASDAQ TRF. Subsequently, NASDAQ amended the NASDAQ Basic filing to remove from the product the last sale transaction reports from the FINRA/NASDAQ TRF. On October 11, 2010, NASDAQ submitted an immediately effective proposed rule change to offer NASDAQ Basic on a permanent basis,<sup>6</sup> and to offer a NASDAQ Basic Enterprise License, which limits the expense of firms that offer NASDAQ Basic to large numbers of users.<sup>7</sup>

NASDAQ has determined through an internal review that the NASDAQ Basic market data product currently includes and has included since its inception last sale transaction reports for the NASDAQ/FINRA TRF.<sup>8</sup> While NASDAQ Rule 7039 reflects the inclusion of last sale transaction reports for the FINRA/NASDAQ TRF in the NLS product, NASDAQ Rule 7047 does not reflect the inclusion of the same data element via the NASDAQ Basic product.

Through this proposed rule change, NASDAQ seeks to establish that it may disseminate last sale transaction reports for the FINRA/NASDAQ TRF through NASDAQ Basic, and to modify the language of Rule 7047 to reflect their inclusion in that product. NASDAQ is also proposing a clerical change to reflect the correct name for the NYSE MKT, previously known as the NYSE Alternext market. NASDAQ is proposing no change to the fees for NASDAQ Basic through this filing.<sup>9</sup>

##### **2. Statutory Basis**

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act<sup>10</sup> in general, and with Section 6(b)(5) of the Act<sup>11</sup> in particular, in that the proposal

<sup>6</sup> See Securities Exchange Act Release No. 65527 (October 11, 2011), 76 FR 64147 (October 17, 2011) (SR-NASDAQ-2011-129).

<sup>7</sup> See Securities Exchange Act Release No. 65526 (October 11, 2011), 76 FR 64137 (October 17, 2011) (SR-NASDAQ-2011-130).

<sup>8</sup> The inclusion of the data appears to have stemmed from a misunderstanding on the part of personnel who understood NASDAQ Basic to be a combination of the NLS product with NASDAQ best bid and offer data, rather than a product containing only Exchange data, without data from the FINRA/NASDAQ TRF.

<sup>9</sup> NASDAQ has announced its intention to modify fees for NASDAQ Basic. See <http://www.nasdaqtrader.com/TraderNews.aspx?id=dn2013-09>. However, any such fee change would be effected through a separate proposed rule change that would fully explain the statutory basis for the change.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The purpose of the proposed rule change is to recognize inclusion of FINRA/NASDAQ TRF last sale data from the NLS product in the NASDAQ Basic product. The NASDAQ Basic product, in turn, provides a subset of the data that is also provided by the Level 1 data feed available under the NASDAQ UTP Plan. NASDAQ believes that the proposal facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by confirming the availability of an additional means by which investors may access information about transactions reported to the FINRA/NASDAQ TRF, thereby providing investors with additional options for accessing information that may help to inform their trading decisions. Given that Section 11A the Act<sup>12</sup> requires the dissemination of FINRA/NASDAQ TRF last sale reports under the NASDAQ UTP Plan, and the dissemination of the same data is currently permitted through the NLS product, NASDAQ believes that the inclusion of the same data in NASDAQ Basic is also consistent with the Act.

NASDAQ further notes that the current fees for NASDAQ Basic have been previously established, and that the Commission has either specifically determined them to be consistent with the Act or has permitted them to become effective on an immediately effective basis.<sup>13</sup> Thus, this proposed rule change does not establish or change a fee of the Exchange. However, to the extent that the proposed rule change

confirms that NASDAQ Basic may contain FINRA/NASDAQ TRF data, NASDAQ believes that the change also provides further justification that the fees for NASDAQ Basic provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers,<sup>14</sup> in that the change reflects the full value of the product without any increase in its cost.<sup>15</sup>

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers (“BDs”) 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. NASDAQ believes that its NASDAQ Basic market data product, as amended, is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act’s goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.<sup>16</sup>

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010) (“*NetCoalition I*”), upheld the Commission’s reliance upon competitive markets to set reasonable

and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system ‘evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed’ and that the SEC wield its regulatory power ‘in those situations where competition may not be sufficient,’ such as in the creation of a ‘consolidated transactional reporting system.’” *NetCoalition I*, at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission’s conclusion that “Congress intended that ‘competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.’”<sup>17</sup>

The Court in *NetCoalition I*, while upholding the Commission’s conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record in that case did not adequately support the Commission’s conclusions as to the competitive nature of the market for NYSE Arca’s data product at issue in that case. As explained below in NASDAQ’s Statement on Burden on Competition, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition I* case, and that the Commission is entitled to rely upon such evidence in concluding fees are the product of competition, and therefore in accordance with the relevant statutory standards.<sup>18</sup> Moreover, NASDAQ further notes that the product at issue in this filing—a NASDAQ quotation and last sale data product that replicates a subset of the information available through “core” data products whose fees have been reviewed and approved by the SEC—is quite different from the NYSE Arca depth-of-book data product at issue in *NetCoalition I*. Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing. As the Commission noted in approving the initial pilot for NASDAQ Basic, all of the information available in NASDAQ

<sup>12</sup> 15 U.S.C. 78k–1.

<sup>13</sup> Securities Exchange Act Release No. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (SR–NASDAQ–2008–102) (finding current per user and per subscriber fees to be consistent with the Act); Securities Exchange Act Release No. 59933 (May 15, 2009), 74 FR 24889 (May 26, 2009) (SR–NASDAQ–2009–208) (finding current distributor fees for NASDAQ Basic to be consistent with the Act); Securities Exchange Act Release No. 64994 (July 29, 2011), 76 FR 47621 (August 5, 2011) (SR–NASDAQ–2011–091) (immediate effectiveness of optional derived data fee); Securities Exchange Act Release No. 65526 (October 11, 2011), 76 FR 64137 (October 17, 2011) (SR–NASDAQ–2011–130) (immediate effectiveness of enterprise license fee).

<sup>14</sup> 15 U.S.C. 78f(b)(4), (5).

<sup>15</sup> But see *supra* n. 9.

<sup>16</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>17</sup> *NetCoalition I*, at 535.

<sup>18</sup> It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. See also *NetCoalition v. SEC*, 715 F.3d 342 (D.C. Cir. 2013) (“*NetCoalition II*”) (finding no jurisdiction to review Commission’s non-suspension of immediately effective fee changes).



Basic is included in the core data feeds made available pursuant to the joint-SRO plans, the fees for which have been approved by the Commission.<sup>19</sup> The inclusion of FINRA/NASDAQ TRF data in NASDAQ Basic does not alter this fact, since such data is also included in the core data distributed under the NASDAQ UTP Plan. As the Commission further determined, “the availability of alternatives to NASDAQ Basic significantly affect the terms on which NASDAQ can distribute this market data. In setting the fees for its NASDAQ Basic service, NASDAQ must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange’s data.”<sup>20</sup> Thus, to the extent that the fees for core data have been determined to be reasonable under the Act, it follows that the fees for NASDAQ Basic are also reasonable, since charging unreasonably high fees would cause market participants to rely solely on core data rather than purchasing NASDAQ Basic.

Moreover, as discussed in the order approving the initial pilot, and as further discussed below in NASDAQ’s Statement on Burden on Competition, data products such as NASDAQ Basic are a means by which exchanges compete to attract order flow. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they are able to provide. Conversely, to the extent that exchanges are unsuccessful, the inputs needed to add value to data products are diminished. Accordingly, the need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable. The inclusion of FINRA/NASDAQ TRF data in NASDAQ Basic increases the value of the product, the fees for which have previously been established as reasonable.

The fees for NASDAQ Basic also continue to reflect an equitable allocation and continue not be unfairly discriminatory, because NASDAQ Basic is a voluntary product for which market participants can readily substitute core data feeds that provide additional quotation and last sale information not available through NASDAQ Basic. Accordingly, NASDAQ is constrained from pricing the product in a manner that would be inequitable or unfairly discriminatory. Moreover, the fee schedule for NASDAQ Basic is designed

to ensure that the fees charged are tailored to the specific usage patterns of a range of potential customers. Thus, low per-query fees are designed for customers that use the product only sporadically. Fees for non-professional subscribers, as well as the derived data fee and enterprise license fee that provide for unlimited distribution to non-professional users, are intended to provide a means to provide for low-cost availability of the product to retail investors through brokerage firms and market data vendors. Finally, professional subscriber fees provide a means for brokerage customers to use the information internally. The distinction between fees for professional and non-professional users is consistent with the distinction made under Commission-approved fees for core data, and the applicable fees are lower than applicable fees for core data to reflect the lesser quantum of data made available. The range of fee options further ensures that customers are not charged a fee that is inequitably disproportionate to the use that they make of the product.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ’s ability to price NASDAQ Basic is constrained by (1) competition among exchanges, other trading platforms, and TRFs that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary data.

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market. Similarly, with respect to the TRF data, allowing exchanges to operate TRFs has permitted them to earn revenues by providing technology and data in support of the non-exchange segment of

the market. This revenue opportunity has also resulted in fierce competition between the two current TRF operators, with both TRFs charging extremely low trade reporting fees and rebating the majority of the revenues they receive from core market data to the parties reporting trades.

Transaction executions and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs.<sup>21</sup> The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange’s transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.*, if the software can be downloaded over the Internet after being purchased).<sup>22</sup> In NASDAQ’s case, it is costly to build and maintain a trading platform, but the

<sup>21</sup> A complete explanation of the pricing dynamics associated with joint products is presented in a study that NASDAQ originally submitted to the Commission in SR-NASDAQ-2011-010, and which is also submitted as Exhibit 3 to this filing. See Statement of Janusz Ordoover and Gustavo Bamberger at 2–17 (December 29, 2010).

<sup>22</sup> See William J. Baumol and Daniel G. Swanson, “The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,” *Antitrust Law Journal*, Vol. 70, No. 3 (2003).

<sup>19</sup> Securities Exchange Act Release No. 12425 (March 16, 2009), 74 FR 12423, 12425 (March 24, 2009) (SR-NASDAQ-2008-102).

<sup>20</sup> *Id.* at 12425.



incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are *the* source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, NASDAQ would be unable to defray its platform costs of providing the joint products. Similarly, data products cannot make use of TRF trade reports without the raw material of the trade reports themselves, and therefore necessitate the costs of operating, regulating,<sup>23</sup> and maintaining a trade reporting system, costs that must be covered through the fees charged for use of the facility and sales of associated data.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NASDAQ Basic that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as

Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail BDs, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. Exchanges, TRFs, and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, NASDAQ believes that products such as NASDAQ Basic can enhance order flow to NASDAQ by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the data through their brokerage firm or other distribution sources. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create exchange data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products. Similarly, the inclusion of trade reporting data in a product such as NASDAQ Basic may assist in attracting customers to the product, thereby assisting in covering the additional costs associated with operating and regulating a TRF.

Competition among trading platforms can be expected to constrain the

aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. NASDAQ pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an "excessive" price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including thirteen SRO markets, as well as internalizing BDs and various forms of alternative trading systems ("ATs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products.

<sup>23</sup> It should be noted that the costs of operating the FINRA/NASDAQ TRF borne by NASDAQ include regulatory charges paid by NASDAQ to FINRA.

Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE MKT, NYSE Arca, BATS, and Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless. Notably, the potential sources of data include the BDs that submit trade reports to TRFs and that have the ability to consolidate and distribute their data without the involvement of FINRA or an exchange-operated TRF.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NASDAQ Basic, the data provided through that product appears both in (i) real-time core data products offered by the SIPs for a fee, and (ii) free SIP data products with a 15-minute time delay, and finds a close substitute in similar products of competing venues.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data

individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters. In Europe, Markit aggregates and disseminates data from over 50 brokers and multilateral trading facilities.<sup>24</sup>

In the case of TRFs, the rapid entry of several exchanges into this space in 2006–2007 following the development and Commission approval of the TRF structure demonstrates the contestability of this aspect of the market.<sup>25</sup> Given the demand for trade reporting services that is itself a by-product of the fierce competition for transaction executions—characterized notably by a proliferation of ATSs and BDs offering internalization—any supra-competitive increase in the fees associated with trade reporting or TRF data would shift trade report volumes from one of the existing TRFs to the other<sup>26</sup> and create incentives for other TRF operators to enter the space. Alternatively, because BDs reporting to TRFs are themselves free to consolidate the market data that they report, the market for over-the-counter data itself, separate and apart from the markets for execution and trade reporting services—is fully contestable.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at \$1 per month for non-professional users. Second, consolidated data is also available *at no cost* with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as quotation and last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for

proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

The competitive nature of the market for non-core “sub-set” products such as NASDAQ Basic is borne out by the performance of the market. In May 2008, the Internet portal Yahoo! began offering its Web site viewers real-time last sale data (as well as best quote data) provided by BATS. In response, in June 2008, NASDAQ launched NLS, which was initially subject to an “enterprise cap” of \$100,000 for customers receiving only one of the NLS products, and \$150,000 for customers receiving both products. The majority of NASDAQ's sales were at the capped level. In early 2009, BATS expanded its offering of free data to include depth-of-book data. Also in early 2009, NYSE Arca announced the launch of a competitive last sale product with an enterprise price of \$30,000 per month. In response, NASDAQ combined the enterprise cap for the NLS products and reduced the cap to \$50,000 (*i.e.*, a reduction of \$100,000 per month). Although each of these products offers only a specific subset of data available from the SIPs, NASDAQ believes that the products are viewed as substitutes for each other and for core last-sale data, rather than as products that must be obtained in tandem. For example, while Yahoo! and Google now both disseminate NASDAQ's last sale product, several other major content providers, including MSN and Morningstar, use the BATS last sale product.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. “No one disputes that competition for order flow is ‘fierce’.” *NetCoalition I* at 539. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in

<sup>24</sup> <http://www.markit.com/en/products/data/boat/boat-boat-data.page>.

<sup>25</sup> The low cost exit of two TRFs from the market is also evidence of a contestable market, because new entrants are reluctant to enter a market where exit may involve substantial shut-down costs.

<sup>26</sup> It should be noted that the FINRA/NYSE TRF has, in recent weeks, received reports for over 10% of all over-the-counter volume in NMS stocks. In addition, FINRA has announced plans to update its Alternative Display Facility, which is also able to receive over-the-counter trade reports. See Securities Exchange Act Release No. 70048 (July 26, 2013), 78 FR 46652 (August 1, 2013) (SR-FINRA-2013-031).

the cost of NASDAQ Basic would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting NASDAQ Basic data revenues, the value of NASDAQ Basic as a tool for attracting order flow, and ultimately, the volume of orders routed to NASDAQ and reported to the FINRA/NASDAQ TRF and the value of its other data products.

In establishing the price for NASDAQ Basic, NASDAQ considered the competitiveness of the market for quotation and last sale data and all of the implications of that competition. NASDAQ 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 numerous alternatives to NASDAQ Basic, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the NASDAQ Basic product in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>27</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>28</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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2014-005 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2014-005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2014-005 and should be submitted on or before February 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-01405 Filed 1-23-14; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-71342; File No. SR-NYSEMKT-2014-02]

**Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Extend the Operation of Its New Market Model Pilot Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or July 31, 2014**

January 17, 2014.

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 January 6, 2014, NYSE MKT LLC ("NYSE MKT" 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 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 extend the operation of its New Market Model Pilot, currently scheduled to expire on January 31, 2014, until the earlier of Securities and Exchange Commission ("Commission") approval to make such pilot permanent or July 31, 2014. 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

<sup>27</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>28</sup> 17 CFR 240.19b-4(f)(6).

<sup>29</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.

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 extend the operation of its New Market Model Pilot ("NMM Pilot") that was adopted pursuant to its merger with the New York Stock Exchange LLC ("NYSE").<sup>4</sup> The NMM Pilot was approved to operate until October 1, 2009. The Exchange filed to extend the operation of the Pilot to November 30, 2009, March 30, 2010, September 30, 2010, January 31, 2011, August 1, 2011, January 31, 2012, July 31, 2012, January 31, 2013, July 31, 2013, and January 31, 2014, respectively.<sup>5</sup> The Exchange now seeks to extend the operation of the NMM

Pilot, currently scheduled to expire on January 31, 2014, until the earlier of Commission approval to make such pilot permanent or July 31, 2014.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE.<sup>6</sup>

Background<sup>7</sup>

In December 2008, the Exchange implemented significant changes to its equities market rules, execution technology and the rights and obligations of its equities market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model that it implemented through the NMM Pilot.

As part of the NMM Pilot, the Exchange eliminated the function of equity specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.<sup>8</sup> The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest.<sup>9</sup>

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule ("CCS").<sup>10</sup> CCS provides the Display Book<sup>®11</sup> with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange Best Bid or Best Offer ("BBO"). CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange's BBO. During the operation of the NMM Pilot, orders or portions thereof that establish priority<sup>12</sup> retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

The NMM Pilot was originally scheduled to end operation on October 1, 2009, or such earlier time as the Commission may determine to make the rules permanent. The Exchange filed to extend the operation of the Pilot on several occasions<sup>13</sup> in order to prepare a rule filing seeking permission to make the above described changes permanent. The Exchange is currently still preparing such formal submission but does not expect that filing to be completed and approved by the Commission before January 31, 2014.

Proposal To Extend the Operation of the NMM Pilot

The Exchange established the NMM Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and to add a new competitive market participant. The Exchange believes that the NMM Pilot allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the NMM Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot until July 31, 2014, in order to allow the Exchange time to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

The proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

<sup>4</sup> NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the "Merger"). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC ("Amex"), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC. See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex-2008-62) (approving the Merger). Subsequently, NYSE Alternext US LLC was renamed NYSE Amex LLC, which was then renamed NYSE MKT LLC and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "Act"). See Securities Exchange Act Release Nos. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR-NYSEALTR-2009-24) and 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR-NYSEAmex-2012-32).

<sup>5</sup> See Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR-NYSEAmex-2009-65). See also Securities Exchange Act Release Nos. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR-NYSEAmex-2009-83) (extending Pilot to March 30, 2010); 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR-NYSEAmex-2010-28) (extending Pilot to September 1, 2010); 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR-NYSEAmex-2010-86) (extending Pilot to January 31, 2011); 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR-NYSEAmex-2010-123) (extending Pilot to August 1, 2011); 64773 (June 29, 2011), 76 FR 39453 (July 6, 2011) (SR-NYSEAmex-2011-43) (extending Pilot to January 31, 2012); 66042 (December 23, 2011), 76 FR 82326 (December 30, 2011) (SR-NYSEAmex-2011-102) (extending Pilot to July 31, 2012); 67495 (July 25, 2012), 77 FR 45406 (July 31, 2012) (SR-NYSEMKT-2012-21) (extending the Pilot to January 31, 2013); 68559 (January 2, 2013), 78 FR 1286 (January 8, 2013) (SR-NYSEMKT-2012-84) (extending Pilot to July 31, 2013); and 69812 (June 20, 2013), 78 FR 38766 (June 27, 2013) (SR-NYSEMKT-2013-51) (extending Pilot to January 31, 2014).

<sup>6</sup> See SR-NYSE-2014-01.

<sup>7</sup> The information contained herein is a summary of the NMM Pilot. See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) for a fuller description.

<sup>8</sup> See NYSE MKT Rule 103—Equities.

<sup>9</sup> See NYSE MKT Rule 60—Equities; see also NYSE MKT Rules 104—Equities and 1000—Equities.

<sup>10</sup> See NYSE MKT Rule 1000—Equities.

<sup>11</sup> The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

<sup>12</sup> See NYSE MKT Rule 72(a)(ii)—Equities.

<sup>13</sup> See *supra* note 5.

Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Sections 6(b)(5) of the Act,<sup>15</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change is designed to facilitate transactions in securities and to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. The Exchange also believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because it seeks to extend a pilot program that has already been approved by the Commission. Moreover, requesting an extension of the NMM Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b-4 approval process. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>16</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that extending the operation of the NMM Pilot will

enhance competition among liquidity providers and thereby improve execution quality on the Exchange. The Exchange will continue to monitor the efficacy of the program during the proposed extended pilot period.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting the services it offers and the requirements it imposes to remain competitive with other U.S. equity exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

#### *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>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>19</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>20</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the

Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.<sup>21</sup>

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.

#### **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-NYSEMKY-2014-02 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKY-2014-02. 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

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>21</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 15 U.S.C. 78f(b)(8).

public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSEMKT-2014-02 and should be submitted on or before February 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority:<sup>22</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-01396 Filed 1-23-14; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71351; File No. SR-NASDAQ-2014-006]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change With Respect to NASDAQ Last Sale

January 17, 2014.

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 January 9, 2014, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is filing with the Commission a proposal to make permanent the fee pilot program pursuant to which NASDAQ distributes

the NASDAQ Last Sale ("NLS") market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the "NASDAQ Last Sale for NASDAQ" and "NASDAQ Last Sale for NYSE/NYSE MKT" data feeds containing last sale activity in U.S. equities within the NASDAQ Market Center and reported to the FINRA/NASDAQ Trade Reporting Facility ("FINRA/NASDAQ TRF"), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority ("FINRA").

The pilot program has supported the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by millions of investors on Web sites operated by Google, Interactive Data, and Dow Jones, among others. Accordingly, NASDAQ believes that it would be consistent with the protection of investors and the public interest to make the product permanent.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

\* \* \* \* \*

#### 7039. NASDAQ Last Sale Data Feeds

(a) [For a three month pilot period commencing on January 1, 2014.] NASDAQ [shall] offers two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1)-(2) No change.

(b)-(c) No change.

\* \* \* \* \*

#### 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

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data at no cost to millions of internet users and television viewers. NASDAQ now proposes to make the existing pilot program permanent, subject to the same fee structure as is applicable today.

NLS consists of two separate "Level 1" products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the "NASDAQ Last Sale for NASDAQ" data product is a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the "NASDAQ Last Sale for NYSE/NYSE MKT" data product provides real-time last sale information including execution price, volume, and time for NYSE- and NYSE MKT-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. By contrast, the securities information processors ("SIPs") that provide "core" data consolidate last sale information from all exchanges and trade reporting facilities ("TRFs"). Thus, NLS replicates a subset of the information provided by the SIPs.

In the pilot programs, NASDAQ established two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. NASDAQ is proposing to maintain this existing structure for the permanent version of the product. Specifically, firms with the ability to maintain username/password entitlement systems that enable them to track the number of entitled users and/or quote counting

<sup>22</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.

mechanisms that enable them to track the number of queries made for data are eligible for a specified fee schedule for the NASDAQ Last Sale for NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/NYSE MKT Product.

The per query model is well suited to subscribers that expect to access the product on a sporadic basis, while the per user model allows unlimited usage by a fixed number of users, at a per month cost that is less than the daily price of a major newspaper. Moreover,

a per query user may cap its fees such that they would not exceed the applicable per user charge. The per user and per query fee schedules are as follows:

#### NASDAQ LAST SALE FOR NASDAQ

| Users/month         | Price                  | Query         | Price           |
|---------------------|------------------------|---------------|-----------------|
| 1–9,999 .....       | \$0.60/usermonth ..... | 0–10M .....   | \$0.003/query.  |
| 10,000–49,999 ..... | \$0.48/usermonth ..... | 10M–20M ..... | \$0.0024/query. |
| 50,000–99,999 ..... | \$0.36/usermonth ..... | 20M–30M ..... | \$0.0018/query. |
| 100,000+ .....      | \$0.30/usermonth ..... | 30M+ .....    | \$0.0015/query. |

#### NASDAQ LAST SALE FOR NYSE/NYSE MKT

| Users/month         | Price                  | Query         | Price             |
|---------------------|------------------------|---------------|-------------------|
| 1–9,999 .....       | \$0.30/usermonth ..... | 0–10M .....   | \$0.0015/query.   |
| 10,000–49,999 ..... | \$0.24/usermonth ..... | 10M–20M ..... | \$0.0012/query.   |
| 50,000–99,999 ..... | \$0.18/usermonth ..... | 20M–30M ..... | \$0.0009/query.   |
| 100,000+ .....      | \$0.15/usermonth ..... | 30M+ .....    | \$0.000725/query. |

The higher price for NLS for NASDAQ, in comparison to NLS for NYSE/NYSE MKT, reflects NASDAQ's higher market share in the securities that it lists and the correspondingly larger amount of data made available through the product.

Firms that are unable to maintain username/password entitlement systems and/or quote counting mechanisms also have multiple options for purchasing the NASDAQ Last Sale data. These firms choose between a "Unique Visitor" model for internet delivery or a "Household" model for television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third-party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion. In addition, to reflect the growing confluence between these media outlets, NASDAQ offers a reduction in television fees when a single distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms. The applicable fee schedules are as follows:

#### NASDAQ LAST SALE FOR NASDAQ

| Unique visitors  | Monthly fee             |
|------------------|-------------------------|
| 1–100,000 .....  | \$0.036/Unique Visitor. |
| 100,000–1M ..... | \$0.03/Unique Visitor.  |
| 1M+ .....        | \$0.024/Unique Visitor. |

#### NASDAQ LAST SALE FOR NYSE/NYSE MKT

| Unique visitors  | Monthly fee             |
|------------------|-------------------------|
| 1–100,000 .....  | \$0.018/Unique Visitor. |
| 100,000–1M ..... | \$0.015/Unique Visitor. |
| 1M+ .....        | \$0.012/Unique Visitor. |

#### NASDAQ LAST SALE FOR NASDAQ

| Household    | Monthly fee          |
|--------------|----------------------|
| 1–1M .....   | \$0.00096/Household. |
| 1M–5M .....  | \$0.00084/Household. |
| 5M–10M ..... | \$0.00072/Household. |
| 10M+ .....   | \$0.0006/Household.  |

#### NASDAQ LAST SALE FOR NYSE/NYSE MKT

| Household    | Monthly fee          |
|--------------|----------------------|
| 1–1M .....   | \$0.00048/Household. |
| 1M–5M .....  | \$0.00042/Household. |
| 5M–10M ..... | \$0.00036/Household. |
| 10M+ .....   | \$0.0003/Household.  |

NASDAQ also established a cap on the monthly fee, currently set at \$50,000 per month, for all NASDAQ Last Sale products. The fee cap enables NASDAQ to compete effectively against other exchanges that also offer last sale data for purchase or at no charge. The fee cap also ensures that users with large numbers of users or viewers can make the product available at a per user/viewer fee measured in fractions of a penny per month, with the per user/viewer fee dropping as the number of persons receiving the data increases.

As with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/NYSE MKT products pay a single \$1,500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The \$1,500 monthly fee applies to all distributors and does not vary based on whether the distributor distributes the data internally or externally or distributes the data via both the internet and television.

#### 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general, and with Section 6(b)(5) of the Act,<sup>4</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The purpose of the proposed rule change is to make permanent the pilot program under which NASDAQ has distributed the NASDAQ Last Sale product. NLS provides a subset of the data that is also

<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> 15 U.S.C. 78f(b)(5).



provided by the core data feeds available through the SIPs. NASDAQ believes that the proposal facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by making permanent the availability of an additional means by which investors may access information about securities transactions, thereby providing investors with additional options for accessing information that may help to inform their trading decisions. Given that Section 11A the Act<sup>5</sup> requires the dissemination of last sale reports in core data, NASDAQ believes that the inclusion of the same data in NLS is also consistent with the Act.

NASDAQ further notes that the pilot program fees for NLS have been previously established, and that the Commission has either specifically determined them to be consistent with the Act or has permitted them to become effective on an immediately effective basis.<sup>6</sup> Thus, this proposed rule change does not establish or change a fee of the Exchange, except to the extent that it provides that the fees charged during the current pilot period for NLS may continue to be charged on a going-forward basis. However, in this

filing, NASDAQ reiterates its bases for concluding that the fees for NLS provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>7</sup>

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers (“BDs”) 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. NASDAQ believes that its NLS market data products are precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act’s goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.<sup>8</sup>

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010) (“*NetCoalition I*”), upheld the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system ‘evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed’ and that the SEC wield its

regulatory power ‘in those situations where competition may not be sufficient,’ such as in the creation of a ‘consolidated transactional reporting system.’ *NetCoalition I*, at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission’s conclusion that “Congress intended that ‘competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.’”<sup>9</sup>

The Court in *NetCoalition I*, while upholding the Commission’s conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record in that case did not adequately support the Commission’s conclusions as to the competitive nature of the market for NYSE Arca’s data product at issue in that case. As explained below in NASDAQ’s Statement on Burden on Competition, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition I* case, and that the Commission is entitled to rely upon such evidence in concluding fees are the product of competition, and therefore in accordance with the relevant statutory standards.<sup>10</sup> Moreover, NASDAQ further notes that the product at issue in this filing—a NASDAQ last sale data product that replicates a subset of the information available through “core” data products whose fees have been reviewed and approved by the SEC—is quite different from the NYSE Arca depth-of-book data product at issue in *NetCoalition I*. Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

All of the information made available through NLS is also included in the core data feeds made available pursuant to the joint-SRO plans, the fees for which have been approved by the Commission. As the Commission determined in approving the initial pilot program for NASDAQ Basic, another product that offers a subset of information also made available through the joint-SRO plans,

<sup>9</sup> *NetCoalition I*, at 535.

<sup>10</sup> It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. See also *NetCoalition v. SEC*, 715 F.3d 342 (D.C. Cir. 2013) (“*NetCoalition II*”) (finding no jurisdiction to review Commission’s non-suspension of immediately effective fee changes).

<sup>5</sup> 15 U.S.C. 78k–1.

<sup>6</sup> See Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060) (approving initial fees for NLS on a pilot basis). See also Securities Exchange Act Release Nos. 58894 (October 31, 2008), 73 FR 66953 (November 12, 2008) (SR–NASDAQ–2008–086); 59186 (December 30, 2008), 74 FR 743 (January 7, 2009) (SR–NASDAQ–2008–103); 59652 (March 30, 2009), 74 FR 15533 (April 6, 2009) (SR–NASDAQ–2009–027); 60201 (June 30, 2009), 74 FR 32670 (July 8, 2009) (SR–NASDAQ–2009–062); 60990 (November 12, 2009), 74 FR 60002 (November 19, 2009) (SR–NASDAQ–2009–095); 61872 (April 8, 2009), 75 FR 19444 (April 14, 2010) (SR–NASDAQ–2010–045); 62428 (July 1, 2010), 75 FR 39315 (July 8, 2010) (SR–NASDAQ–2010–081); 63092 (October 13, 2010), 75 FR 64375 (October 19, 2010) (SR–NASDAQ–2010–129); 63641 (January 4, 2011), 76 FR 2164 (January 12, 2011) (SR–NASDAQ–2010–172); 64188 (April 5, 2011), 76 FR 20054 (April 11, 2011) (SR–NASDAQ–2011–044); 64856 (July 12, 2011), 76 FR 41845 (July 15, 2011) (SR–NASDAQ–2011–092); 65488 (October 5, 2011), 76 FR 63334 (October 12, 2011) (SR–NASDAQ–2011–132); 66095 (January 4, 2012), 77 FR 1537 (January 10, 2012) (SR–NASDAQ–2011–174); 66706 (March 30, 2012), 77 FR 20666 (April 5, 2012) (SR–NASDAQ–2012–045); 67376 (July 9, 2012), 77 FR 41467 (July 13, 2012) (SR–NASDAQ–2012–078); 67979 (October 4, 2012), 77 FR 61810 (October 11, 2012) (SR–NASDAQ–2012–108); 68568 (January 3, 2013), 78 FR 1910 (January 9, 2013) (SR–NASDAQ–2012–145); 69245 (March 27, 2013), 78 FR 19722 (April 2, 2013) (SR–NASDAQ–2013–053); 69908 (July 2, 2013), 78 FR 41178 (July 9, 2013) (SR–NASDAQ–2013–089); 70575 (September 30, 2013), 78 FR 62820 (October 22, 2013) (SR–NASDAQ–2013–126); 71217 (December 31, 2013), 79 FR 875 (January 7, 2014) (SR–NASDAQ–2013–162).

<sup>7</sup> 15 U.S.C. 78f(b)(4), (5).

<sup>8</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).



“the availability of alternatives to NASDAQ Basic significantly affect the terms on which NASDAQ can distribute this market data. In setting the fees for its NASDAQ Basic service, NASDAQ must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange’s data.”<sup>11</sup> Analogously, it follows that the fees for NLS are reasonable, since charging unreasonably high fees would cause market participants to rely solely on core data rather than purchasing NLS.

Moreover, as further discussed below in NASDAQ’s Statement on Burden on Competition, data products such as NLS are a means by which exchanges compete to attract order flow. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they are able to provide. Conversely, to the extent that exchanges are unsuccessful, the inputs needed to add value to data products are diminished. Accordingly, the need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.

The fees for NLS also continue to reflect an equitable allocation and continue not to be unfairly discriminatory, because NLS is a voluntary product for which market participants can readily substitute core data feeds that provide additional last sale information not available through NLS. Accordingly, NASDAQ is constrained from pricing the product in a manner that would be inequitable or unfairly discriminatory. Moreover, the fee schedule for NLS is designed to ensure that the fees charged are tailored to the specific usage patterns of a range of potential customers, in a manner designed to avoid charging fees that are inequitably allocated or unfairly discriminatory. Thus, customers that intend to distribute data through the internet or television can avail themselves of a pricing model under which per “unique visitor” or “household” charges drop as the number of persons receiving the data through these media increases. Likewise, subscribers distributing data through both television and the internet receive a discount for their use of both media. Similarly, for users that limit usage to a finite number of users, or that wish to avail themselves of the data on a limited per query basis, pricing

models are available to ensure that fees bear an equitable relation to the volume of usage, with per user and per query fees dropping as the volume of usage increases and with per query fees subject to a cap to ensure that users opting for this method do not exceed corresponding per user fees in a month of high usage. In all instances, charges for NASDAQ Last Sale for NYSE/NYSE MKT are lower than charges for NASDAQ Last Sale for NASDAQ to reflect the lower volume of data available through the former product and to provide users with a choice of receiving all NASDAQ Last Sale data or only a portion of it. Finally, all fees are subject to a monthly cap. Thus, the range of fee options ensures that customers are not charged a fee that is inequitably disproportionate to the use that they make of the product; rather, depending on the use that they intend to make of the product, they may select the fee model that will best minimize their costs.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ’s ability to price its Last Sale Data Products is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market. Similarly, with respect to the FINRA/NASDAQ TRF data that is a component of NLS, allowing exchanges to operate TRFs has permitted them to earn revenues by providing technology and data in support of the non-exchange segment of the market. This revenue opportunity has also resulted in fierce

competition between the two current TRF operators, with both TRFs charging extremely low trade reporting fees and rebating the majority of the revenues they receive from core market data to the parties reporting trades.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange’s transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (e.g., if the software can be downloaded over the internet after being purchased).<sup>12</sup> In NASDAQ’s case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to

<sup>11</sup> Securities Exchange Act Release No. 12425 (March 16, 2009), 74 FR 12423, 12425 (March 24, 2009) (SR-NASDAQ-2008-102).

<sup>12</sup> See William J. Baumol and Daniel G. Swanson, “The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,” *Antitrust Law Journal*, Vol. 70, No. 3 (2003).

significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, NASDAQ would be unable to defray its platform costs of providing the joint products. Similarly, data products cannot make use of TRF trade reports without the raw material of the trade reports themselves, and therefore necessitate the costs of operating, regulating,<sup>13</sup> and maintaining a trade reporting system, costs that must be covered through the fees charged for use of the facility and sales of associated data.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NLS that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail BDs, such as Schwab

and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. Exchanges, TRFs, and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, NASDAQ believes that products such as NLS can enhance order flow to NASDAQ by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products. Similarly, the inclusion of TRF trade reporting data in a product such as NLS may assist in attracting customers to the product, thereby assisting in covering the additional costs associated with operating and regulating a TRF.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. NASDAQ pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to

attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an "excessive" price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including thirteen SRO markets, as well as internalizing BDs and various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE MKT, NYSE Arca, BATS, and Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate

<sup>13</sup> It should be noted that the costs of operating the FINRA/NASDAQ TRF borne by NASDAQ include regulatory charges paid by NASDAQ to FINRA.

single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless. Notably, the potential sources of data include the BDs that submit trade reports to TRFs and that have the ability to consolidate and distribute their data without the involvement of FINRA or an exchange-operated TRF.

The fact that proprietary data from ATSS, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NLS, the data provided through that product appears both in (i) real-time core data products offered by the SIPs for a fee, and (ii) free SIP data products with a 15-minute time delay, and finds a close substitute in last-sale products of competing venues.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSS operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters. In Europe, Markit aggregates and disseminates data from

over 50 brokers and multilateral trading facilities.<sup>14</sup>

In the case of TRFs, the rapid entry of several exchanges into this space in 2006–2007 following the development and Commission approval of the TRF structure demonstrates the contestability of this aspect of the market.<sup>15</sup> Given the demand for trade reporting services that is itself a by-product of the fierce competition for transaction executions—characterized notably by a proliferation of ATSS and BDs offering internalization—any supra-competitive increase in the fees associated with trade reporting or TRF data would shift trade report volumes from one of the existing TRFs to the other<sup>16</sup> and create incentives for other TRF operators to enter the space. Alternatively, because BDs reporting to TRFs are themselves free to consolidate the market data that they report, the market for over-the-counter data itself, separate and apart from the markets for execution and trade reporting services—is fully contestable.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at \$1 per month for non-professional users. Second, consolidated data is also available *at no cost* with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

The competitive nature of the market for products such as NLS is borne out by the performance of the market. In May 2008, the Internet portal Yahoo! began offering its Web site viewers real-time last sale data (as well as best quote

data) provided by BATS. In response, in June 2008, NASDAQ launched NLS, which was initially subject to an “enterprise cap” of \$100,000 for customers receiving only one of the NLS products, and \$150,000 for customers receiving both products. The majority of NASDAQ's sales were at the capped level. In early 2009, BATS expanded its offering of free data to include depth-of-book data. Also in early 2009, NYSE Arca announced the launch of a competitive last sale product with an enterprise price of \$30,000 per month. In response, NASDAQ combined the enterprise cap for the NLS products and reduced the cap to \$50,000 (*i.e.*, a reduction of \$100,000 per month). Although each of these products offers only a specific subset of data available from the SIPs, NASDAQ believes that the products are viewed as substitutes for each other and for core last-sale data, rather than as products that must be obtained in tandem. For example, while Yahoo! and Google now both disseminate NASDAQ's product, several other major content providers, including MSN and Morningstar, use the BATS product.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. “No one disputes that competition for order flow is ‘fierce’.” *NetCoalition I* at 539. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of NLS would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting NLS data revenues, the value of NLS as a tool for attracting order flow, and ultimately, the volume of orders routed to NASDAQ and the value of its other data products.

In establishing the price for the NASDAQ Last Sale Products, NASDAQ considered the competitiveness of the market for last sale data and all of the

<sup>14</sup> <http://www.markit.com/en/products/data/boat/boat-boat-data.page>.

<sup>15</sup> The low cost exit of two TRFs from the market is also evidence of a contestable market, because new entrants are reluctant to enter a market where exit may involve substantial shut-down costs.

<sup>16</sup> It should be noted that the FINRA/NYSE TRF has, in recent weeks, received reports for over 10% of all over-the-counter volume in NMS stocks. In addition, FINRA has announced plans to update its Alternative Display Facility, which is also able to receive over-the-counter trade reports. See Securities Exchange Act Release No. 70048 (July 26, 2013), 78 FR 46652 (August 1, 2013) (SR-FINRA-2013-031).

implications of that competition. NASDAQ 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 numerous alternatives to NLS, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the NLS product in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Three comment letters were filed regarding NLS as originally published for comment. NASDAQ responded to these comments in a letter dated December 13, 2007. Both the comment letters and NASDAQ's response are available on the SEC Web site at <http://www.sec.gov/comments/sr-nasdaq-2006-060/nasdaq2006060.shtml>. In addition, in response to prior filings to extend the NLS pilot,<sup>17</sup> the Securities Industry and Financial Markets Association ("SIFMA") and/or NetCoalition<sup>18</sup> filed comment letters contending that the SEC should suspend and institute disapproval proceedings with respect to the filing. SIFMA and NetCoalition had also filed petitions seeking review by the United States Court of Appeals for the District of Columbia Circuit with respect to the NLS pricing pilots in effect from July 1, 2011 through September 30, 2011, from October 1, 2011 through December 31, 2011, from July 1, 2012 through September 30, 2012, and from January 1, 2013 through March 31, 2013. These appeals were stayed pending resolution of the consolidated *NetCoalition II* case. On April 30, 2013, the court issued a

decision dismissing *NetCoalition II*, concluding that it lacked jurisdiction to entertain the case. Subsequently, the court issued orders dismissing each of the pending petitions seeking review of prior extensions of the NLS pricing pilot. On May 30, 2013, SIFMA filed with the Commission an "Application for an Order Setting Aside Rule Changes of Certain Self-Regulatory Organizations Limiting Access to their Services" that purports to challenge prior filings under Section 19(d) and (f) of the Act.<sup>19</sup> Pursuant to a Commission procedural order, interested parties have recently completed submission of briefs to the Commission regarding appropriate procedures and other threshold questions.

It appears to NASDAQ that SIFMA's contentions in this new proceeding are similar to the contentions in its numerous prior comment letters, which have repeatedly argued that market data fees are improper unless established through public utility-style rate-making proceedings that are nowhere contemplated by the Act. In making its arguments, SIFMA has sought to rely upon *NetCoalition I*, while repeatedly mischaracterizing the import of that case. Specifically, the court made findings about the extent of the Commission's record in support of determinations about a depth-of-book product offered by NYSE Arca. In making this limited finding, the court nevertheless squarely rejected contentions that cost-based review of market data fees was required by the Act:

The petitioners believe that the SEC's market-based approach is prohibited under the Exchange Act because the Congress intended "fair and reasonable" to be determined using a cost-based approach. The SEC counters that, because it has statutorily-granted flexibility in evaluating market data fees, its market-based approach is fully consistent with the Exchange Act. We agree with the SEC.<sup>20</sup>

While the court noted that cost data could sometimes be relevant in determining the reasonableness of fees, it acknowledged that submission of cost data may be inappropriate where there are "difficulties in calculating the direct costs . . . of market data," *id.* at 539. That is the case here, due to the fact that the fixed costs of market data production are inseparable from the fixed costs of providing a trading platform, and the marginal costs of

market data production are minimal.<sup>21</sup> Because the costs of providing execution services and market data are not unique to either of the provided services, there is no meaningful way to allocate these costs among the two "joint products"—and any attempt to do so would result in inherently arbitrary cost allocations.<sup>22</sup>

SIFMA further contended that prior filings lacked evidence supporting a conclusion that the market for NLS is competitive, asserting that arguments about competition for order flow and substitutability were rejected in *NetCoalition I*. While the court did determine that the record before it was not sufficient to allow it to endorse those theories on the facts of that case, the court did not itself make any conclusive findings about the actual presence or absence of competition or the accuracy of these theories: rather, it simply made a finding about the state of the SEC's record. Moreover, analysis about competition in the market for depth-of-book data is only tangentially relevant to the market for last sale data. As discussed above and in prior filings, perfect and partial substitutes for NLS exist in the form of real-time core market data, free delayed core market data, and the last sale products of competing venues; additional competitive entry is possible; and evidence of competition is readily apparent in the pricing behavior of the venues offering last sale products and the consumption patterns of their customers. Thus, although NASDAQ believes that the competitive nature of the market for all market data, including depth-of-book data, will ultimately be established, SIFMA's submissions have not only mischaracterized the *NetCoalition I* decision, but have also failed to address the characteristics of the product at issue and the evidence already presented.

<sup>21</sup> Because the fees charged for products must cover these fixed costs, however, pricing at marginal cost is impossible.

<sup>22</sup> The court also explicitly acknowledged that the "joint product" theory set forth by NASDAQ's economic experts in *NetCoalition I* (and also described in this filing) could explain the competitive dynamic of the market and explain why consideration of cost data would be unavailing. Indeed, the Commission relied on that theory before the DC Circuit, but the court declined to reach the question because the Commission raised it for the first time on appeal. *Id.* at 541 n.16. For the purpose of providing a complete explanation of the theory, NASDAQ is further submitting as Exhibit 3 to this filing a study that was submitted to the Commission in SR-NASDAQ-2011-010. See Statement of Janusz Ordoover and Gustavo Bamberger at 2-17 (December 29, 2010).

<sup>17</sup> Securities Exchange Act Release Nos. 70575 (September 30, 2013), 78 FR 62820 (October 22, 2013) (SR-NASDAQ-2013-126); 69245 (March 27, 2013), 78 FR 19772 (April 2, 2013) (SR-NASDAQ-2013-053); 68568 (January 3, 2013), 78 FR 1910 (January 9, 2013) (SR-NASDAQ-2012-145); 67376 (July 9, 2012), 77 FR 41467 (July 13, 2012) (SR-NASDAQ-2012-078); 65488 (October 5, 2011), 76 FR 63334 (October 12, 2011) (SR-NASDAQ-2011-132); 64856 (July 12, 2011), 76 FR 41845 (July 15, 2011) (SR-NASDAQ-2011-092); 64188 (April 5, 2011), 76 FR 20054 (April 11, 2011) (SR-NASDAQ-2011-044).

<sup>18</sup> NetCoalition recently terminated its operations.

<sup>19</sup> Admin. Proc. File No. 3-15351. See also Admin. Proc. File No. 13-15350 (similar proceeding with respect to NYSEArca data product).

<sup>20</sup> *NetCoalition I*, 615 F.3d at 534.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>23</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>24</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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2014-006 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2014-006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2014-006 and should be submitted on or before February 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-01404 Filed 1-23-14; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-71346; File No. SR-BOX-2014-04]**

### **Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add Rule 7290 (Price Protection for Limit Orders)**

January 17, 2014.

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 January 6, 2014, BOX Options Exchange LLC ("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 from interested persons.

<sup>25</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 Exchange proposes to add Rule 7290 (Price Protection for Limit Orders) to codify an existing price protection feature. The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Web site at <http://boxexchange.com>, at the Commission's Public Reference Room, and on the Commission's Web site at <http://sec.gov>.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the 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 proposing to add BOX Rule 7290 (Price Protection for Limit Orders) to codify and clarify a price protection feature already available on the Exchange. Specifically, the Exchange currently has a price check feature in place that prevents incoming limit orders<sup>3</sup> and limit order modifications from automatically executing at potentially erroneous prices. The Exchange believes this feature helps maintain a fair and orderly market by mitigating the risks associated with erroneously priced limit orders that have the potential to cause price dislocation.

Proposed Rule 7290 will codify the price protection feature in the BOX Rulebook and provide clarity on its functionality. As set forth in proposed Rule 7290, the Exchange employs a filter on all incoming limit orders and limit order modifications, pursuant to which the Trading Host will cancel these orders if priced outside an acceptable price parameter set by the Exchange. Specifically, as the Exchange receives limit orders and limit order

<sup>23</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>24</sup> 17 CFR 240.19b-4(f)(6).

<sup>3</sup> See BOX Rule 7110(c)(1). Limit Orders entered into the BOX Book are executed at the price stated or better.

modifications, the Trading Host compares the price of each order against the contra-side NBBO at the time of order entry to determine if the price is outside the acceptable price parameter.<sup>4</sup> If the order is priced outside of the acceptable price parameter, it will be rejected.

Unless determined otherwise by the Exchange and announced to the Participants via Informational Circular, the price parameters will be set at the price 100% greater than the NBO (for incoming buy orders), and 100% less than the NBB (for incoming sell orders), when the NBB/NBO is priced at or below \$0.25; and the price parameters will be set at the price 50% greater than the NBO (for incoming buy orders), and 50% less than the NBB (for incoming sell orders), when the NBB/NBO is priced above \$0.25. The Exchange will reject all incoming buy (sell) orders that are priced above (below) those parameters. For example, if the NBO is \$1.20, a buy order priced at or above \$1.80 ( $\$1.20 \times 1.50$ ) will be rejected. Likewise, if the NBB is \$1.10, a sell order priced at or below \$0.55 ( $\$1.10 \times 0.50$ ) will be rejected. If the NBO is \$0.10, a buy order priced at or above \$0.20 ( $\$0.10 \times 2.00$ ) will be rejected. However, if the NBB is less than or equal to \$0.25, the default limits set above will result in all incoming sell orders being accepted regardless of their limit.

The price protection feature will be operational each trading day after the opening until the close of trading, and will apply only to incoming limit orders and limit order modifications.<sup>5</sup> The Exchange further notes that this feature will be available to all Participants; however, it will be disabled until the Participant enables it by contacting the BOX Market Operations Center ("MOC").

The Exchange believes this feature will prevent the entry of limit orders that are priced so significantly beyond the prevailing market price that the execution of such orders could cause substantial price dislocation in the market. The Exchange also believes that this feature will further serve to mitigate the occurrence of erroneous executions.

<sup>4</sup> The price parameter is set by the Exchange and is a percentage of the NBBO on the opposite side of the incoming order.

<sup>5</sup> Pursuant to Rule 7110(g) orders can be modified once they are held in the BOX Book. If the price of a limit order on the BOX Book is modified by a Participant, the updated price will be checked against the contra-side NBBO to determine whether the order's new price is outside the acceptable price range. If the modified order price is outside the price range the order will be rejected, regardless of whether the original price of the limit order was within the price range.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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. In particular, the Exchange believes that rejecting incoming limit orders which are priced a significant percentage away from the NBB or NBO assures that executions will not occur at erroneous prices, thereby promoting a fair and orderly market. Additionally, the Exchange believes that the proposed feature is reasonable as it will protect Participants by mitigating the risk of having orders executed at erroneous prices. Furthermore, Participants may choose whether or not to subscribe to this feature.

### 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 the proposal will provide market participants with additional protection against erroneous executions. The Exchange does not believe the proposed rule change imposes any burden on intramarket competition as the feature is available to all Participants. The Exchange also notes that it is not mandatory for Participants to use this feature and it is only enabled when requested by the Participant. Thus, the Exchange does not believe the proposal creates any significant impact on 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 comments on the proposed rule change.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

## 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) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

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.

## 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-BOX-2014-04 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BOX-2014-04. This file number should be included on the

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-BOX-2014-04, and should be submitted on or before February 14, 2014].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2014-01400 Filed 1-23-14; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71353; File Nos. SR-BSECC-2013-001; SR-BX-2013-057; SR-NASDAQ-2013-148; SR-Phlx-2013-115; SR-SCCP-2013-01]

### Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; NASDAQ OMX BX, Inc.; the NASDAQ Stock Market LLC; NASDAQ OMX PHLX LLC; Stock Clearing Corporation of Philadelphia; Order Approving Proposed Rule Changes To Amend the Restated Certificate of Incorporation and By-Laws of the NASDAQ OMX Group, Inc.

January 17, 2014.

#### I. Introduction

On November 27, 2013, Boston Stock Exchange Clearing Corporation ("BSECC"), NASDAQ OMX BX, Inc. ("BX"), the NASDAQ Stock Market LLC ("NASDAQ"), NASDAQ OMX PHLX LLC ("Phlx"), and the Stock Clearing Corporation of Philadelphia ("SCCP" and, together with BSECC, BX, NASDAQ and Phlx, the "SROs" or "Self-Regulatory Subsidiaries"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> proposed rule changes with respect to amendments to the Restated Certificate of Incorporation ("Charter") and By-Laws (the "By-Laws") of the NASDAQ OMX Group, Inc. ("NASDAQ OMX"), the parent company of the SROs.<sup>4</sup> The proposed rule changes were published for comment in the **Federal Register** on December 12, 2013.<sup>5</sup> The Commission

received no comment letters on the proposals.

#### II. Discussion

##### A. Proposed Amendments to the Charter

##### 1. Removal and Replacement of Supermajority Voting Requirements

The SROs are proposing amendments to provisions of the Charter to replace each supermajority voting requirement in the Charter with a "majority of outstanding shares" voting requirement. The Charter currently includes the following three supermajority voting requirements pertaining to the: (1) Removal of directors;<sup>6</sup> (2) adoption, alteration, amendment or repeal of any By-Law;<sup>7</sup> and (3) amendment, repeal, or adoption of provisions inconsistent with certain charter provisions.<sup>8</sup> For each of the three foregoing provisions, the SROs are proposing to remove the requirement for an affirmative vote of at least 66⅔% of the total voting power of the Voting Stock and replace it with a voting standard requiring the affirmative vote of a majority of the outstanding Voting Stock.

The SROs state that, in developing this proposal, NASDAQ OMX considered the relative weight of the arguments for and against supermajority voting requirements.<sup>9</sup> The SROs believe

71020 (December 6, 2013), 78 FR 75598 (December 12, 2013) (SR-SCCP-2013-01) (collectively, "Notices").

<sup>6</sup> Article Fifth, Paragraph D provides that, except for the Preferred Stock Directors (as defined in Article Fifth, Paragraph B), any director, or the entire Board of Directors ("Board"), may be removed from office at any time, but only by the affirmative vote of at least 66⅔% of the total voting power of the outstanding shares of NASDAQ OMX's capital stock entitled to vote generally in the election of directors ("Voting Stock"), voting together as a single class.

<sup>7</sup> Article Eighth, Paragraph A provides that the affirmative vote of the holders of at least 66⅔% of the total voting power of the outstanding Voting Stock, voting together as a single class, shall be required in order for the stockholders to adopt, alter, amend or repeal any By-Law.

<sup>8</sup> Article Ninth, Paragraph A provides that the affirmative vote of the holders of at least 66⅔% of the voting power of the outstanding Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with paragraph C of Article Fourth, Article Fifth, Article Seventh, Article Eighth, or Article Ninth of the Charter.

Article Fourth, Paragraph C sets forth the 5% voting limitation, which provides that holders of NASDAQ OMX's voting securities may not cast votes in excess of 5% of NASDAQ OMX's outstanding voting securities. The SROs note that NASDAQ OMX is not proposing any change to the 5% voting limitation itself. According to the SROs, NASDAQ OMX only proposes that any future amendment of the 5% voting limitation will require the approval of stockholders holding a majority of the outstanding shares, rather than stockholders holding 66⅔% of the outstanding shares.

<sup>9</sup> See, e.g., NASDAQ Notice, 78 FR at 75620. The SROs remark that, historically, supermajority voting

Continued

<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>4</sup> Certain provisions of NASDAQ OMX's Charter and By-Laws are rules of a self-regulatory organization if they are stated policies, practices, or interpretations, as defined in Rule 19b-4 under the Act, of the self-regulatory organization, and must be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder. See Securities Exchange Act Release Nos. 58183 (July 17, 2008), 73 FR 42850 (July 23, 2008) (File No. SR-NASDAQ-2008-035); 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01); and 58180 (July 17, 2008), 73 FR 42890 (July 23, 2008) (File No. SR-SCCP-2008-01). Accordingly, the SROs have filed with the Commission proposed changes to the NASDAQ OMX Charter and By-Laws.

<sup>5</sup> See Securities Exchange Act Release Nos. 71019 (December 6, 2013), 78 FR 75633 (December 12, 2013) (SR-BSECC-2013-001); 71011 (December 6, 2013), 78 FR 75645 (December 12, 2013) (SR-BX-2013-057); 71013 (December 6, 2013), 78 FR 75619 (December 12, 2013) (SR-NASDAQ-2013-148) ("NASDAQ Notice"); 71010 (December 6, 2013), 78 FR 75661 (December 12, 2013) (SR-Phlx-2013-115);

<sup>12</sup> 17 CFR 200.30-3(a)(12).



that, while it is important to protect against coercive takeover tactics, it is also critically important to obtain stockholder input and respond to stockholder concerns about corporate governance.<sup>10</sup> The SROs believe that the proposed “majority of outstanding shares” voting requirement will continue to provide some protection against proposals that are harmful to the stockholders.<sup>11</sup> The SROs therefore believe that a “majority of outstanding shares” standard is a balanced outcome that responds to stockholder feedback while appropriately maintaining NASDAQ OMX’s defensive posture against hostile takeovers.<sup>12</sup>

## 2. Non-Substantive Changes

The SROs also propose to amend and restate the Charter to make non-substantive changes, as described in greater detail in the Notices.<sup>13</sup> Generally, these changes involve the deletion of obsolete references, the correction of typographical errors, and amendments to the introductory and concluding language of the Charter as required by Delaware law. The SROs believe that the amendment and restatement of the Charter to incorporate these non-substantive changes will simplify and streamline the document.<sup>14</sup>

requirements have protected corporations against coercive takeover tactics by requiring broad stockholder support for certain types of transactions or governance changes. The SROs indicate that in recent years, corporate governance standards have evolved, and many stockholder rights advocates have argued that supermajority voting requirements limit stockholders’ participation in corporate governance.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* While the SROs note that this requirement is less difficult to satisfy than a supermajority voting requirement, they believe that it is more difficult to satisfy than a “majority of votes cast” requirement.

<sup>12</sup> *Id.*

<sup>13</sup> See, e.g., NASDAQ Notice, 78 FR at 75620.

<sup>14</sup> *Id.* However, the SROs note that, after the non-substantive changes, the remaining text of Article Fourth, Paragraph C(6) of the Charter includes an obsolete cross-reference to Section 6(b) of Article Fourth, Paragraph C in the second sentence, which begins “The Board, however, may not approve an exemption under Section 6(b) . . . .” See, e.g., NASDAQ Notice, 78 FR at 75620, at note 9.

The SROs note that this cross-reference, which should refer to Section 6 without further reference to a subsection (b), cannot be corrected without NASDAQ OMX seeking further approval of its stockholders, which would require NASDAQ OMX to call and hold a stockholder meeting. Generally, NASDAQ OMX holds stockholder meetings only once or twice a year. The SROs note that it is atypical for a large public company like NASDAQ OMX to submit a proposal to its stockholders solely to correct a cross-reference in its Charter. The SROs state that following consultation by NASDAQ OMX with outside counsel, it is clear, based on the drafting history of this provision, that the intent of the cross-reference is to refer to Section 6 of Article Fourth, Paragraph C of the Charter. In other words,

## B. Proposed Elimination of Certificate of Designation

The SROs propose to eliminate NASDAQ OMX’s Certificate of Designation, Preferences and Rights of Series A Convertible Preferred Stock (“Series A Convertible Preferred Stock”), and all matters set forth therein.<sup>15</sup> According to the SROs, NASDAQ OMX will file a certificate of elimination with the Secretary of State of the State of Delaware to eliminate the Series A Convertible Preferred Stock. The SROs state that, under Delaware law, a certificate of elimination is deemed to be an amendment to the Charter, but, because the amendment is limited in scope, it does not require the approval of NASDAQ OMX’s stockholders.<sup>16</sup>

## C. Proposed Amendments to the Bylaws

### 1. Special Meetings of Stockholders

Current Section 3.2 of the By-Laws provides that only NASDAQ OMX may call special meetings of its stockholders. The SROs state that, in response to feedback from NASDAQ OMX’s stockholders, this provision will be deleted and replaced with language that will allow the stockholders to call

the second sentence of Article Fourth, Paragraph C(6) should read: “The Board, however, may not approve an exemption under Section 6: (i) For a registered broker or dealer or an Affiliate thereof or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act.” The SROs state that, under no circumstances will the obsolete cross-reference be read to imply that the Board could grant an exemption to the ownership limitation in Article Fourth, Paragraph C(6) of the Charter for a registered broker or dealer or an Affiliate (as defined in Article Fourth, Paragraph C(3)(a)) thereof, or an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act. The SROs remark that the proposed amendments to Section 12.5 of the By-Laws will eliminate cross-references to the now obsolete subsection (b) of Article Fourth, Paragraph C(6) of the Charter. According to the SROs, NASDAQ OMX recognizes that there are some differences in language between the second sentence of Article Fourth, Paragraph C(6) of the Charter and the second sentence of Section 12.5 of the By-Laws. To the extent that these differences would cause a difference in interpretation, the SROs state that, following consultation by NASDAQ OMX with outside counsel, the Charter language shall prevail. The SROs state that, as soon as feasible, NASDAQ OMX plans to present a proposal to the stockholders to conform this provision of the Charter to the By-Laws.

<sup>15</sup> See, e.g., NASDAQ Notice, 78 FR at 75620. As described in the Notices, the Series A Convertible Preferred Stock was created in 2009 to facilitate the conversion of certain notes into common stock. In 2010, following stockholder approval, all issued shares of the Series A Convertible Preferred Stock were converted into common stock. The SROs represent that, since then, no shares of the Series A Convertible Preferred Stock have been outstanding, and NASDAQ OMX has no intention to issue further shares of this series.

<sup>16</sup> See, e.g., NASDAQ Notice, 78 FR at 75620–21 (citing Section 151(g) of the DGCL).

special meetings, subject to certain procedures. The SROs note that, similar to the elimination of the supermajority voting requirements, the implementation of the right of stockholders to call a special meeting has received recent attention from investor and corporate governance advocates.<sup>17</sup> The SROs remark that these advocates argue that such a right will enable stockholders to raise and act on matters that arise between annual meetings.<sup>18</sup> According to the SROs, NASDAQ OMX believes that it is appropriate to allow stockholders who meet certain procedural requirements to call a special meeting.<sup>19</sup> The SROs explained that, by incorporating these procedural requirements, NASDAQ OMX intends to ensure timely notice of a meeting request and to gather sufficient information about the proposing stockholder(s) and the proposal.<sup>20</sup> The SROs state that, among other things, this information will ensure that NASDAQ OMX is able to comply with its disclosure and other requirements under applicable law and that NASDAQ OMX, its Board and its stockholders are able to assess the proposal adequately.<sup>21</sup> The proposed procedural requirements are described in greater detail in the Notices.<sup>22</sup>

### 2. Annual Meetings of Stockholders

Section 3.1 of NASDAQ OMX’s By-Laws, which is the “advance notice” provision,<sup>23</sup> requires stockholders to notify NASDAQ OMX, during a specified period in advance of an annual meeting, of their intention to nominate one or more persons for election to the Board or to present a business proposal for consideration by the stockholders at the meeting. The SROs explain that, while designing the proposed procedural requirements for stockholders to call a special meeting, as noted generally above and described in greater detail in the Notices, NASDAQ OMX evaluated the existing procedural requirements for stockholders to bring business before an annual meeting.<sup>24</sup>

<sup>17</sup> See, e.g., NASDAQ Notice, 78 FR at 75621.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See, e.g., NASDAQ Notice, 78 FR at 75621–22.

<sup>23</sup> “Advance notice” provisions allow stockholder(s) to bring business before an annual meeting of stockholders, but set forth procedural requirements to ensure that companies and boards have sufficient information about the proposal and the proposing stockholder(s), as well as adequate time to consider the proposal, by requiring the proposing stockholder(s) to give advance notice of the intention to bring the proposal before the annual meeting.

<sup>24</sup> See, e.g., NASDAQ Notice, 78 FR at 75622–23.



According to the SROs, the proposed changes to some of these procedures are intended to enhance and conform them, in some cases, to the procedures relating to special meetings.<sup>25</sup> The SROs state that generally the proposed amendments add requirements for extensive disclosures by proposing stockholders about themselves, any proposed nominees for director and any proposed items of business to be brought before a meeting.<sup>26</sup> The specific amendments are described in greater detail in the Notices.<sup>27</sup>

### 3. Questionnaire, Representation and Agreement for Director-Nominees

The SROs propose to add new Section 3.5 to the By-laws to require nominees for director to deliver to NASDAQ OMX, in accordance with the time periods prescribed for delivery of a stockholder's notice: (i) A written questionnaire with respect to the background and qualifications of the nominee; and (ii) a written representation and agreement as to certain matters. The provisions of the specific written representation and agreement are discussed in greater detail in the Notices.<sup>28</sup> The SROs believe that the requirements of proposed Section 3.5 of the By-Laws, which will apply to both NASDAQ OMX's and stockholders' nominees for director positions, will ensure that NASDAQ OMX has the necessary information about nominees to fulfill its public disclosure requirements.<sup>29</sup> The SROs state that the requirements also will ensure that nominees will comply with the legal obligations, policies, and procedures applicable to all NASDAQ OMX directors.<sup>30</sup>

### 4. Removal and Replacement of Supermajority Voting Provisions

The SROs propose to amend each provision of the By-Laws that currently requires a supermajority vote of stockholders to instead require a "majority of votes outstanding." The By-Laws currently include the following two supermajority voting requirements, each of which conforms to an analogous provision in the Charter. The SROs propose conforming replacements to the supermajority voting requirements in Section 4.6 (pertaining to removal of directors) and Section 11.1 (pertaining to adoption, alteration, amendment or repeal of the By-Laws) with a voting

standard requiring the affirmative vote of a majority of the outstanding Voting Stock.<sup>31</sup> As discussed above with respect to the analogous Charter amendments, the SROs believe that a "majority of outstanding shares" standard reflects a balanced approach that responds to stockholder feedback while appropriately maintaining NASDAQ OMX's defensive posture against hostile takeovers.<sup>32</sup>

### 5. Procedure for Filling Board Vacancies

Section 4.8 of the By-Laws sets forth the procedures to fill a director position that has become vacant, whether because of death, disability, disqualification, removal or resignation. Under the current provisions, if such a vacancy occurs, the Nominating & Governance Committee of the Board shall nominate, and the Board shall elect by majority vote, a person to fill the vacancy. In light of the addition of a right for stockholders to call a special meeting, as discussed above, the SROs propose amendments to Section 4.8 to state explicitly that vacancies on the Board are to be filled by a majority vote of the Board, and not by stockholders.<sup>33</sup> In addition, to prescribe procedures in case multiple Board vacancies occur at the same time, the proposed amendments state that a Board vacancy shall be filled by the majority of the directors, even if there is less than a quorum, or by the sole remaining director, if there is only one director remaining on the Board.<sup>34</sup> The SROs note that the proposed amendments do not change any of the other procedures for filling Board vacancies.<sup>35</sup>

### 6. Use of Electronic Means for Certain Notices and Related Waivers

The SROs propose amendments to Sections 4.12(a) and (b) of the By-Laws to provide that both notices of meetings of the Board, and waivers of such notices, can be given by email or other means of written electronic transmission.<sup>36</sup> The SROs state that these amendments are intended merely

to expand the means through which notices of meetings and waivers of notices may be given, and the amendments do not affect any of the other procedural requirements of Sections 4.12(a) and (b).<sup>37</sup> In addition, the SROs state that the proposed amendments reflect current practices, as a substantial amount of communications between NASDAQ OMX and its directors, outside of Board meetings, occurs through electronic means.<sup>38</sup>

### 7. Composition of Management Compensation Committee

The SROs propose amendments to Section 4.13(f) of the By-Laws, which relate to the composition of the Management Compensation Committee of NASDAQ OMX's Board, to conform to the recent amendments to NASDAQ's listing rules. Specifically, the SROs propose to state that NASDAQ OMX's Management Compensation Committee must consist of at least two members and that each member shall meet the eligibility requirements set forth in the NASDAQ Stock Market Rules ("Rules"). As explained in the Notices, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act and Rule 10C-1 under the Exchange Act,<sup>39</sup> NASDAQ recently amended its listing rules relating to compensation committees.<sup>40</sup> The SROs note that, because NASDAQ OMX is listed on NASDAQ, it must comply with these listing rules just like any other listed company.

### 8. No Amendment or Repeal of Certain By-Law Amendments

The SROs propose to add a proviso to Section 11.2 of the Bylaws to state that no By-Law adopted by the stockholders shall be amended or repealed by the Board if the By-Law so adopted so provides. The SROs state that this is a stockholder-friendly provision that is intended to prevent the Board from subsequently overriding stockholder

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> See, e.g., NASDAQ Notice, 78 FR at 75626. Currently, Section 4.12(a) of the By-Laws provides that notice of any meeting of the Board shall be deemed duly given to a director if, among other methods, the notice is sent to the director at the address last made known in writing to NASDAQ OMX by telegraph, telefax, cable, radio or wireless. Section 4.12(b) of the By-Laws provides that such notice of a board meeting need not be given to any director if waived by the director in writing or by electronic transmission (or by telegram, telefax, cable, radio or wireless and subsequently confirmed in writing or by electronic transmission).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> See Public Law 111-203, 124 Stat. 1376 (2010) and 17 CFR 240.10C-1.

<sup>40</sup> See Securities Exchange Act Release Nos. 68640 (January 11, 2013), 78 FR 4554 (January 22, 2013) (SR-NASDAQ-2012-109); 71037 (December 11, 2013), 78 FR 76179 (December 16, 2013) (SR-NASDAQ-2013-147). Among other things, the Rules related to listing require each NASDAQ-listed company, with certain exceptions, to have a compensation committee of its board of directors, consisting of a minimum of two independent directors who meet additional eligibility requirements relating to compensatory fees and affiliation. See NASDAQ Rule 5605(d)(2), which sets forth requirements for compensation committee composition, and NASDAQ IM 5605-6.

<sup>25</sup> See, e.g., NASDAQ Notice, 78 FR at 75623.

<sup>26</sup> *Id.*

<sup>27</sup> See, e.g., NASDAQ Notice, 78 FR at 75623-25.

<sup>28</sup> See, e.g., NASDAQ Notice, 78 FR at 75625.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

action to amend or repeal the By-Laws.<sup>41</sup>

### 9. Non-Substantive Changes

Finally, the SROs propose additional non-substantive changes, as described in greater detail in the Notices,<sup>42</sup> which the SROs believe will simplify and streamline the By-Laws.

### III. Commission Findings

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in the case of the proposals by BX, NASDAQ and Phlx, and to a clearing agency, in the case of the proposals by BSECC and SCCP.<sup>43</sup> In particular, the Commission finds that the proposed rule changes by BX, NASDAQ and Phlx are consistent with Section 6(b)(1) of the Act,<sup>44</sup> which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder and the rules of the exchange. In addition, the Commission finds that the proposed rule changes by BX, NASDAQ and Phlx are consistent with Section 6(b)(5) of the Act,<sup>45</sup> which, among other things, requires that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposed rule changes by BSECC and SCCP are consistent with Section 17A of the Act,<sup>46</sup> which, among other things, requires that the rules of a clearing agency be designed to facilitate the prompt and accurate clearance and settlement of securities transactions

and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds in its custody or control or for which it is responsible, and to protect investors and the public interest. In particular, the Commission finds that the proposed rule changes contained in the BSECC and SCCP proposals are consistent with Section 17A(b)(3)(C) of the Act,<sup>47</sup> which requires that the rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.

The Commission discusses below certain proposed revisions to the Charter and the By-Laws.

#### Majority Shares Voting Requirement and Special Meetings

Specifically, the Commission believes that the proposed rule changes to adopt a “majority of outstanding shares” standard for changes to NASDAQ OMX’s Charter and By-Laws and to implement a stockholder right to call a special meeting are consistent with the Act. The Commission notes that the SROs have represented that these proposed changes are responsive to individual stockholder proposals that were either approved or had significant support from stockholders at the most recent annual meeting for NASDAQ OMX. The Commission notes that the change to a “majority of outstanding shares” standard is designed to allow certain corporate changes to occur in a manner that closely reflects the desires of NASDAQ OMX’s shareholders.<sup>48</sup>

The SROs also have proposed to prevent the Board from amending or repealing By-Law amendments approved by the stockholders. The SROs have stated that the prohibition on the NASDAQ OMX Board amending or repealing By-Law amendments approved by the stockholders is a stockholder-friendly provision that is intended to prevent the Board from subsequently overriding stockholders’ wishes. The Commission notes that, pursuant to Section 11.3 of the By-laws, for so long as NASDAQ OMX shall control, directly or indirectly, any SRO, any proposed adoption, alteration, amendment, change or repeal of any By-Law shall be submitted to the Board of

each SRO, and if any such proposed amendment must, under Section 19 of the Act and the rules promulgated thereunder, be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

#### Enhanced Procedures for Stockholder Meetings

The SROs have also proposed to amend the NASDAQ OMX By-Laws: (i) To enhance the “advance notice” procedures; (ii) to require certain information and agreements from director-nominees; (iii) to clarify the procedures for filling Board vacancies; and (iv) to allow the use of electronic means for certain notices and waivers.

The Commission notes that the SROs have stated that the additional procedural requirements relating to special and annual meetings by NASDAQ OMX are designed protect investors by stating clearly and explicitly the procedures stockholders must follow to propose business at such meetings. The SROs have further stated that the requirement for certain information and agreements from director-nominees will enhance investor protection by ensuring that nominees provide adequate information about themselves and comply with applicable law and certain NASDAQ OMX policies and procedures relating to the Board. The remaining procedural changes relating to stockholder meetings appear to be clarifying in nature. The Commission believes that these proposed changes should provide stockholders with adequate notice and information for special and annual meetings of NASDAQ OMX.

#### Elimination of Certificate of Designation and Certain Other Changes

The SROs have proposed certain changes to: (i) Eliminate the Certificate of Designation relating to the Series A Convertible Preferred Stock, which is no longer outstanding; (ii) to conform the composition requirements for the Management Compensation Committee of the Board with the NASDAQ listing rules;<sup>49</sup> and (iii) to make other non-

<sup>41</sup> See, e.g., NASDAQ Notice, 78 FR at 75626.

<sup>42</sup> See, e.g., NASDAQ Notice, 78 FR at 75626.

<sup>43</sup> In approving the proposed rule changes, the Commission notes that it has considered the proposed rule changes’ impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>44</sup> 15 U.S.C. 78f(b)(1).

<sup>45</sup> 15 U.S.C. 78f(b)(5).

<sup>46</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>47</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>48</sup> See Securities Exchange Act Release No. 61947 (April 20, 2010), 75 FR 22169 (April 27, 2010) (Order Approving Proposed Rule Change To Amend the Bylaws of NYSE Euronext To Adopt a Majority Voting Standard in Uncontested Elections of Directors). The Commission notes that the proposed rule changes would not affect the 5% voting limitation contained in Article Fourth, Paragraph C of the Charter. See *supra* note 8.

<sup>49</sup> The Commission notes that the proposed rule changes will not alter NASDAQ OMX’s obligations under Section 10C of the Act and Rule 10C-1 thereunder, 15 U.S.C. 78j-3 and 17 CFR 240.10C-1, which relate to compensation committee requirements of listed issuers. According to the SROs, the NASDAQ OMX Compensation Committee must consist of at least two members and each member must meet the eligibility requirements set forth in the Rules. Under NASDAQ Rule 5605(d), the NASDAQ OMX

substantive changes. The Commission believes that these proposed changes should better conform NASDAQ OMX's Charter and By-Laws with current practice and legal requirements. Further, the proposed non-substantive clarifying changes should help to make the Charter and By-Laws more current and concise.<sup>50</sup>

#### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, in the case of BX, NASDAQ and Phlx, and to a registered clearing agency, in the case of BSECC and SCCP.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>51</sup> that the proposed rule changes (SR-BSECC-2013-001; SR-BX-2013-057; SR-NASDAQ-2013-148; SR-Phlx-2013-115; SR-SCCP-2013-01) are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>52</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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**BILLING CODE 8011-01-P**

Compensation Committee is required to be comprised of Independent Directors (as defined in NASDAQ Rule 5605(a)(2)) and meet the additional compensation committee requirements as set forth in NASDAQ Rule 5605(d)(2). *See also* NASDAQ IM 5605-6, and Section 10C of the Act and Rule 10C-1 thereunder.

<sup>50</sup> As noted above, however, after the non-substantive changes, the SROs acknowledge that remaining text of Article Fourth, Paragraph C(6) of the Charter includes an obsolete cross-reference to Section 6(b) of Article Fourth, Paragraph C in the second sentence, which begins "The Board, however, may not approve an exemption under Section 6(b). . . ." *See, e.g.,* NASDAQ Notice, 78 FR at 75620, at note 9. The Commission notes that the SROs have committed that: (i) Under no circumstances will NASDAQ OMX read the obsolete cross-reference to imply that the Board could grant an exemption to the ownership limitation in Article Fourth, Paragraph C(6) of the Charter for a registered broker or dealer or an Affiliate thereof, or an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act; and (ii) as soon as feasible, NASDAQ OMX plans to present a proposal to the stockholders to conform this provision of the Charter to the correct language in Section 12.5 of the By-Laws.

<sup>51</sup> 15 U.S.C. 78s(b)(2).

<sup>52</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71341; File No. SR-FINRA-2013-042]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Require Alternative Trading Systems To Report Volume Information to FINRA and Use Unique Market Participant Identifiers

January 17, 2014.

#### I. Introduction

On September 30, 2013, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 require each alternative trading system ("ATS") to report transaction volume information to FINRA and to obtain and use a unique market participant identifier ("MPID") when reporting trade information to FINRA. The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.<sup>3</sup> The Commission received ten comments on the proposal.<sup>4</sup>

On December 4, 2013, FINRA granted the Commission an extension of time to act on the proposal until January 20, 2014. On January 15, 2014, FINRA filed Amendment No. 1 with the Commission to respond to the comment letters and

<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. 70676 (October 11, 2013), 78 FR 62862 (October 22, 2013) ("Notice of Original Proposal").

<sup>4</sup> *See* Letters to the Commission from William White, Head of Electronic Trading, Barclays Capital Inc., dated November 12, 2013 ("Barclays Letter"); Scott C. Goebel, Senior Vice President & Deputy General Counsel, Fidelity Investments, dated November 12, 2013 ("Fidelity Letter"); Manisha Kimmel, Executive Director, Financial Information Forum, dated November 12, 2013 ("FIF Letter"); Donald Bollerman, Head of Market Operations, IEX Services, LLC, dated November 11, 2013 ("IEX Letter"); Ari Burstein, Senior Counsel, Investment Company Institute, dated November 12, 2013 ("ICI Letter"); Elizabeth K. King, Global Head of Regulatory Affairs, KCG Holdings, Inc., dated November 12, 2013 ("KCG Letter"); Howard Meyerson, General Counsel, Liquidnet, dated November 12, 2013 ("Liquidnet Letter"); Janet McGinness, EVP & Corporate Secretary, NYSE Euronext, dated November 15, 2013 ("NYSE Letter"); Theodore R. Lazo, Managing Director & Associate General Counsel, Securities Industry and Financial Markets Association, dated November 11, 2013 ("SIFMA Letter"); and James Toes, President & CEO, Securities Traders Association, dated November 12, 2013 ("STA Letter").

to propose additional clarifying guidance, including the addition of supplementary material to one of the proposed rules.<sup>5</sup> The Commission is publishing this notice and order to solicit comments on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description of the Proposal

##### Overview

FINRA filed the proposed rule change to impose certain reporting requirements on trading venues that have filed a Form ATS with the Commission.<sup>6</sup> The purpose of the proposal is to make information about ATS trading volume publicly available and thus more transparent. The proposal is also meant to enhance FINRA's ability to monitor ATSs to determine whether they are complying with the requirements of Regulation ATS.

Specifically, FINRA states that the proposal would allow it to better determine whether an ATS is subject to the provisions of Regulation ATS that are triggered by exceeding certain volume thresholds. For instance, Regulation ATS requires an ATS to provide to a national securities exchange or association for display the prices and sizes of orders at the ATS's highest buy price and lowest sell price for any NMS stock, displayed to more than one person in the ATS, with respect to which the ATS has had an average daily trading volume of 5% or more of the aggregate average daily share volume for such NMS stock during at least four of the preceding six calendar months.<sup>7</sup> Regulation ATS also requires any such ATS to provide broker-dealers with fair access to the

<sup>5</sup> *See* Letter to the Commission from Brant K. Brown, Associate General Counsel, FINRA, dated January 15, 2014 ("FINRA Response Letter"). The FINRA Response Letter was submitted into the public comment file for SR-FINRA-2013-042.

<sup>6</sup> Under Regulation ATS, an alternative trading system is defined as "any organization, association, person, group of persons, or system: (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange Act Rule 3b-16]; and (2) That does not: (i) Set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system; or (ii) Discipline subscribers other than by exclusion from trading." 17 CFR 242.300(a). FINRA stated in its Notice of Original Proposal that the proposed rule change would apply to any alternative trading system, as that term is defined in Regulation ATS, that has filed a Form ATS with the Commission.

<sup>7</sup> *See* 17 CFR 242.301(b)(3).

ATS's services to effect a transaction in any such NMS stock.<sup>8</sup>

To achieve these objectives, the proposal would impose two new requirements on ATSs. First, ATSs would be required to report aggregate weekly trade volume information to FINRA, some of which data FINRA would then make publicly available. Second, the proposal would require each ATS to obtain and use a unique MPID in its regulatory reporting to FINRA.

#### Self-Reporting Requirement

Proposed Rule 4552 would require each FINRA member that operates an ATS that has filed a Form ATS with the Commission to report to FINRA its aggregate weekly volume information<sup>9</sup> and number of trades, by security, in securities subject to FINRA trade reporting requirements. The self-reporting requirement would thus apply to any NMS stock,<sup>10</sup> any OTC Equity Security,<sup>11</sup> or any debt security subject to FINRA's Trade Reporting and Compliance Engine ("TRACE") rules ("TRACE-Eligible Securities").<sup>12</sup> The proposed rule change would require this information to be reported to FINRA on a security-by-security basis within seven business days after the end of each calendar week. An ATS that did not execute any trades in a given week would need to submit a report that affirmatively indicated the ATS did not transact any volume that week.

The proposed rule change contains guidance on how ATSs should calculate their volumes to ensure consistency and to avoid potential over-counting of volume. Proposed Rule 4552 provides that, "[w]hen calculating and reporting the volume of securities traded and the number of trades, an alternative trading system shall include only those trades executed within the alternative trading system. If two orders are crossed by the alternative trading system, the volume shall include only the number of shares or par value of bonds crossed as a single trade (e.g., crossing a buy order of 1,000 shares with a sell order of 1,000 shares would be calculated as a single trade of

1,000 shares of volume)." Thus, for example, an ATS would be required to report only trades executed within the ATS<sup>13</sup> (not individual orders routed out of the ATS that might be executed at another venue), and only the volume of each executed trade once (not double-counting for the buy and sell side of the trade).

In addition, FINRA would make some of this reported ATS trade data available to the public. Specifically, FINRA would publish on its Web site the trading information (volume and number of trades) reported for each equity security, with appropriate disclosures that the information is based on ATS-submitted reports and not on reports produced or validated by FINRA. FINRA would do so on a delayed basis: aggregate information concerning trades in NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility<sup>14</sup> would be published on a two-week delayed basis, and aggregate information on all other NMS stocks and all OTC Equity Securities subject to FINRA trade reporting requirements on a four-week delayed basis.<sup>15</sup>

While the reporting obligations in the proposal would apply to transactions in both equity securities (NMS stocks and OTC Equity Securities) and debt securities (TRACE-Eligible Securities), FINRA would not initially publish the data that it receives concerning transaction volume in TRACE-Eligible Securities. FINRA stated that it would not intend to begin publishing self-reported data for TRACE-Eligible Securities "until it has had the opportunity to evaluate the data received from such ATSs and the differences between the existing trade reporting regimes applicable to equity and debt securities."<sup>16</sup>

#### MPID Requirement

The proposed rule change also would require a member operating an ATS to obtain for each such ATS a single, unique MPID that is designated for exclusive use for reporting the ATS's transactions. Members that operate multiple ATSs or engage in other lines

of business requiring the use of MPIDs would therefore be required to obtain and use multiple MPIDs. A firm would not be permitted to use multiple MPIDs for a single ATS, and if a firm operates multiple ATSs, each ATS would be required to have its own MPID.

The proposal would prohibit a member from using a separate MPID assigned to an ATS to report any transaction that is not executed within the ATS and require members to have policies and procedures in place to ensure that trades reported with a separate MPID obtained under the rules are restricted to trades executed within the ATS. FINRA noted that this feature of the proposal would be consistent with obligations that already exist for ATSs, which are required by Regulation ATS "to have in place safeguards and procedures to . . . separate alternative trading system functions from other broker-dealer functions, including proprietary and customer trading."<sup>17</sup>

FINRA currently has three rules that permit the use of multiple MPIDs on FINRA facilities: Rule 6160 (Multiple MPIDs for Trade Reporting Facility Participants), Rule 6170 (Primary and Additional MPIDs for Alternative Display Facility Participants), and Rule 6480 (Multiple MPIDs for Quoting and Trading in OTC Equity Securities). All three rules are permissive, and none of the rules currently requires the use of multiple MPIDs. These three rules would be revised to include language that affirmatively requires any participant of any of these facilities that operates an ATS to obtain a unique MPID for each ATS.<sup>18</sup> In cases where a facility participant wished to use multiple MPIDs, or was required to do so under the proposal, each rule would require the facility participant to submit a written request to FINRA. The three rules, which currently operate on a pilot basis, would also be made permanent.

FINRA noted that member firms currently are required to notify FINRA before changing the usage of the MPID in any way (for example, repurposing an MPID from reflecting ATS activity to other trading activity at the firm). After an ATS is provided its MPID, any reporting by the ATS (either reporting trades to a FINRA TRF, the ADF, the ORF, TRACE, or reporting orders to the Order Audit Trail System ("OATS")) would need to include the MPID assigned to the particular ATS, and the member would need to use the

<sup>8</sup> See 17 CFR 242.301(b)(5). The fair access requirement also applies to other types of securities, including certain unlisted equity securities, municipal securities, and corporate debt securities. See *id.* Certain ATSs are excluded from the fair access requirement. See 17 CFR 242.301(b)(5)(iii).

<sup>9</sup> Volume information for NMS stocks and OTC Equity Securities means the aggregate number of shares traded in each security for the week. Volume information for TRACE-Eligible Securities means the aggregate par value of trades in each security for the week. See proposed Rule 4552(d)(5).

<sup>10</sup> See FINRA Rule 6110.

<sup>11</sup> See FINRA Rule 6410.

<sup>12</sup> See FINRA Rules 6710 and 6730(a).

<sup>13</sup> In response to comments, FINRA submitted Amendment No. 1 to propose additional guidance, in the form of Supplementary Material .01 to the rule, on what it means for a trade to be executed "within the ATS." See *infra* Section III.

<sup>14</sup> Tier 1 includes those NMS stocks in the S&P 500 Index or the Russell 1000 Index and certain ETPs. See NMS Plan to Address Extraordinary Market Volatility.

<sup>15</sup> The delay would be from the week in which the trades occurred, rather than the week the trades were reported to FINRA. See Notice of Original Proposal, 78 FR at 62864 n.17.

<sup>16</sup> Notice of Original Proposal, 78 FR at 62864.

<sup>17</sup> Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70879 (December 22, 1998).

<sup>18</sup> FINRA also proposed to amend Rule 6720, which governs reporting to TRACE, to include similar language.

particular MPID to report all transactions executed within the ATS to the appropriate reporting facility.<sup>19</sup>

FINRA noted further that it would leave in place a voluntary program it adopted in 2010 that allows allow members operating an ATS dark pool to have their daily aggregate trading data published by the TRFs.<sup>20</sup> FINRA believes that the program, which is set forth in Supplementary Material .02 to Rule 6160(c), would largely be eclipsed by the proposal, as all ATSs would now be subject to mandatory reporting requirements. The voluntary program differs slightly from the mandatory requirements of the proposal, however, because it provides for the publication of aggregate daily—rather than weekly—trading volume information. FINRA noted in its proposal that no member has participated in the voluntary program yet.

#### Implementation Schedule

FINRA stated that it would announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 30 days following Commission approval. The implementation date for the self-reporting requirement would be no later than 90 days following publication of the *Regulatory Notice*. The implementation date for the MPID requirement would be no later than 270 days following publication of the *Regulatory Notice*.

The Commission points out that, in the Notice of Original Proposal, FINRA stated that it would announce the “effective date” of the proposed rule change by *Regulatory Notice* within 30 days of Commission approval. In Amendment No. 1, FINRA revised this language to clarify its intent to specify that it will announce the “implementation date,” rather than the “effective date,” of the proposed rule change. FINRA clarified further that the proposed rule change will become effective when it is approved by the Commission. Thus, rules that permit FINRA members to use multiple MPIDs

would immediately convert from operating on a pilot to a permanent basis.

### III. Summary of Comments, FINRA's Response, and Proposed Additional Supplementary Material in Amendment No. 1

As noted above, the Commission received ten comment letters concerning the proposal.<sup>21</sup> Eight of the ten commenters expressed general support for the purpose of the proposal—namely, to increase transparency of ATS trade data.<sup>22</sup> For instance, one commenter stated that it “encourage[d] efforts to standardize ATS transparency across the industry and feel[s] that FINRA is well-positioned to do so.”<sup>23</sup> Another commenter expressed its belief “that quantitative, publicly available information regarding ATS trading can provide market participants, regulators and policymakers a greater understanding of the role ATSs play in the equity marketplace, as well as provide a factual foundation for key discussions and decisions concerning equity market structure issues.”<sup>24</sup>

Several of these commenters, in fact, expressed support for an even broader proposal that would apply to all trading venues, rather than only to ATSs.<sup>25</sup> One such commenter argued that “the proposal should be expanded to include trade information for other off-exchange executions and this information should be made public in the same manner as proposed for ATS trade information.”<sup>26</sup> According to another commenter, “including the entire universe of non-exchange trading is important because while ATSs make up approximately 14% of volume, other dark trading venues account for over 22% of volume and receive a significant portion of the retail order flow in the market.”<sup>27</sup> A different commenter, while supporting a broader effort that would include off-exchange venues not limited to ATSs, stated that such an effort should be coupled with an increase in the transparency of information concerning executions that occur on exchanges against non-displayed trading interest.<sup>28</sup>

In response to these comments concerning the scope of the proposal, FINRA noted that it considered various alternatives and concluded that ATS trade information was an appropriate

first step toward increased transparency in the off-exchange, OTC market. FINRA stated further that it would consider additional steps, including those suggested by the commenters, in the future.<sup>29</sup>

Some commenters voiced concern with certain elements of the proposal or sought further guidance on how the new requirements would be applied. Of these commenters, a majority argued that the self-reporting requirement should be limited in some fashion because it would soon become unnecessary in light of the proposal's MPID requirement.<sup>30</sup> For example, five commenters asked FINRA to make an affirmative commitment that it will eliminate the reporting requirement once the MPID requirement is fully implemented.<sup>31</sup> Additionally, three commenters suggested that FINRA align the proposal's reporting requirement with Rule 605 of Regulation NMS, meaning that ATSs would report monthly to FINRA rather than weekly.<sup>32</sup> Lastly, four commenters urged FINRA to facilitate compliance with the reporting requirement by establishing a standard, simple format for data transmission.<sup>33</sup>

In its response to these comments, FINRA reiterated that it intends to evaluate the necessity of the self-reporting requirement after the MPID requirement is in place. However, FINRA noted that it would plan to use, for comparison purposes, data reported by ATSs under the self-reporting requirement even when those ATSs have unique MPIDs used exclusively to report trades for the ATS. Moreover, FINRA said that the self-reporting requirement would allow the proposal to more quickly recognize its objective of enhancing ATS transparency. Accordingly, FINRA believes that the self-reporting requirement is a necessary first phase of the proposal. FINRA stated that it would eliminate the self-reporting requirement for ATSs subject to FINRA trade reporting requirements

<sup>29</sup> See FINRA Response Letter at 5. FINRA noted however, that any commenter's discussion of enhancing the transparency of on-exchange, non-displayed interest was beyond FINRA's regulatory jurisdiction.

<sup>30</sup> See Barclays, Fidelity, FIF, KCG, SIFMA, and STA Letters. No commenter appeared to take issue with the MPID requirement, and four commenters expressly supported it. See Barclays, Fidelity, IEX, and KCG Letters.

<sup>31</sup> See Fidelity, FIF, KCG, SIFMA, and STA Letters.

<sup>32</sup> See IEX, SIFMA, and STA Letters.

<sup>33</sup> See FIF, Fidelity, IEX, and SIFMA Letters. The FIF Letter additionally requested guidance on several other specific, technical aspects concerning the proposal's implementation. FINRA noted in response that, if the proposal were approved, it would issue guidance that addressed technical details like and including those raised by FIF.

<sup>19</sup> OATS Reporting Members currently are required to include MPIDs on OATS reports. See, e.g., FINRA Rule 7440(b)(3), (c)(1)(B), (c)(2)(A)(ii), and (c)(2)(A)(iii). The proposed rule change would not amend the OATS rules; however, current OATS guidance issued by FINRA provides that “[a]n order that is transferred between two valid MPIDs within the same firm is also considered routed.” See *OATS Reporting Technical Specifications*, at 4–3 (ed. December 11, 2012). Consequently, FINRA noted, after the proposed rule change is implemented, an order routed to an ATS would require the submission of a Route Report, which must reflect the unique MPID of the ATS to which the order was routed. See FINRA Rule 7440(c).

<sup>20</sup> See Securities Exchange Act Release No. 61658 (March 5, 2010), 75 FR 11972 (March 12, 2010).

<sup>21</sup> See *supra* note 4.

<sup>22</sup> See Barclays, Fidelity, IEX, ICI, KCG, NYSE, SIFMA, and STA Letters.

<sup>23</sup> Barclays Letter at 1.

<sup>24</sup> Fidelity Letter at 1–2.

<sup>25</sup> See Fidelity, ICI, KCG, and NYSE Letters.

<sup>26</sup> Fidelity Letter at 2.

<sup>27</sup> NYSE Letter at 1.

<sup>28</sup> See KCG Letter at 5.

if the MPID requirement is implemented and operating as anticipated.<sup>34</sup>

Aside from the self-reporting requirement, several commenters also expressed concern with FINRA's intent to charge a fee for professionals to access and use the data.<sup>35</sup> These comments ranged from questioning the need for FINRA to charge a fee for data that it would not validate to flatly opposing the imposition of any fee on the data. In response, FINRA noted that it would make available for free on its Web site the most recently reported data, as well as limited historic reports. FINRA also reiterated its plan to charge profession users and data vendors a fee to access professional, downloadable reports; however, FINRA stated it would submit a separate filing to propose the specifics of this data product.<sup>36</sup>

Additionally, one commenter took the position that, if the proposal is approved, FINRA should open up a second formal comment period one year after the rule is implemented to allow for an empirical "retrospective review" of the proposal's costs and benefits.<sup>37</sup> In its response, FINRA disagreed and pointed to the Notice of the Original Proposal, in which FINRA said it "intends periodically to assess the reporting and publication of information to consider whether modifications to the scope of securities covered, the delay between the activity and publication, or the frequency of publication of the information are appropriate."<sup>38</sup> Moreover, FINRA claimed that it discussed the terms of the proposed rules with a number of ATS operators prior to submitting the proposal, and "continues to believe that the burdens imposed by the Proposal will be minimal for many firms and that the proposed delays in dissemination are sufficient to avoid potentially damaging information leakage of trading information."<sup>39</sup>

Lastly, one commenter questioned how the proposal would apply to fixed income ATSs in light of the fact that trades from fixed income ATSs may be

reported to FINRA by one of the trade counterparties, rather than by the ATS.<sup>40</sup> In response, FINRA pointed out that various of its equity and debt trade reporting rules impose a trade reporting obligation on an ATS, as the "executing party" under FINRA rules, where the transaction is executed by the ATS. FINRA also noted that, under the proposal, it would not publish the trade data reported by fixed income ATSs until it could evaluate the data for consistency.

Furthermore, FINRA submitted Amendment No. 1 to adopt supplementary material to FINRA Rule 4552 to clarify when trades should be considered to have occurred "within an ATS." Specifically, the proposed supplementary material would provide that a trade should be considered to have occurred within the ATS for purposes of the rule "if the ATS (i) executes the trade; (ii) is considered the 'executing party' to the trade under FINRA rules; or (iii) otherwise matches orders constituting the trade in a manner as contemplated by SEC Rule 3b-16 or SEC Regulation ATS."<sup>41</sup> So, for example, a trade would be considered to have occurred "within an ATS" if the ATS "uses established, non-discretionary methods under which orders interact with each other, and the buyers and sellers entering the orders agree to the terms of the trade."<sup>42</sup>

The proposed supplementary material would further provide a non-exhaustive list of scenarios to illustrate how the "within an ATS" standard would be applied. The list would include: if the trade was executed as a result of the ATS bringing together the purchaser and seller on or through its systems; if the trade was executed by an ATS's subscribers where the subscribers used the ATS system to negotiate the trade, even if the ATS did not itself execute the trade; if the ATS takes either side of the trade for clearance or settlement or in any other way inserts itself into a trade. The supplementary material would also provide that a trade would not be considered to have occurred "within the ATS" if an ATS were to route an order to another member firm or execution venue for handling or execution where that initial order matches against interest resident at the other venue.<sup>43</sup>

<sup>40</sup> See KCG Letter at 4.

<sup>41</sup> FINRA Response Letter at 10 (internal citations omitted).

<sup>42</sup> *Id.*

<sup>43</sup> The supplementary material would additionally state that trades would still be considered to have occurred "within an ATS" for purposes of reporting volume under the proposal even if the ATS has been granted an exemption

#### 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-2013-042 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2013-042. 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 will also 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 publicly available. All submissions should refer to File Number SR-FINRA-2013-042 and should be submitted on or before February 14, 2014.

#### V. Commission Findings

After carefully considering the proposed rule change, as modified by

from its trade reporting obligations under FINRA Rules 6183, 6625, or 6731.

<sup>34</sup> See FINRA Response at 6-7. FINRA noted that, under FINRA rules, an ATS may be granted an exemption from its trade reporting requirements. FINRA said that, in such a case, it would likely need to continue requiring the ATS to self-report, even after the MPID requirement were implemented, because the exempt ATS would not be using the MPID to report its volume (due to its trade reporting exemption). See *id.* at 7 n.13.

<sup>35</sup> See Barclays, Fidelity, FIF, IEX, ICI, Liquidnet, and STA Letters.

<sup>36</sup> See FINRA Response Letter at 8.

<sup>37</sup> See STA Letter at 2-3.

<sup>38</sup> FINRA Response Letter at 8. The Commission notes that this quoted language in FINRA's response appears in the Notice of Original Proposal, 78 FR at 62864.

<sup>39</sup> FINRA Response Letter at 8-9.

Amendment No. 1, the comments submitted, and FINRA's response to the comments, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>44</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 15A(b)(6) of the Act,<sup>45</sup> which requires, among other things, that FINRA rules 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.

The Commission believes that the stated objectives of the proposal—to enhance FINRA's regulatory capabilities with respect to ATSs and to increase public transparency with respect to ATS activity—would further the purposes of the Act. By better enabling FINRA to surveil ATSs for compliance with Regulation ATS, and the display and fair access requirements applicable to ATSs that exceed certain volume thresholds, the proposal is reasonably designed to help prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. By collecting and publishing weekly volume statistics (first, through the self-reporting requirement, and later, potentially, through the MPID requirement), the proposal would increase the amount of information that is publicly available concerning trades that occur in equity ATSs. As many commenters noted, such added transparency would allow regulators and the public to more fully understand the role that equity ATSs play in the marketplace.

The Commission further believes that the proposal is reasonably tailored to achieve these objectives. The self-reporting requirement, which is meant to constitute the first phase of the proposal, will more quickly deliver the benefits of the proposal, and also provide a comparison for the data that FINRA will receive once the MPID requirement is fully in effect. While the Commission acknowledges that some commenters took issue with the additional costs that could potentially be incurred as a result of the weekly self-reporting requirement, the Commission notes, as FINRA did in its

Notice of Original Proposal, that ATSs are already required by Regulation ATS to maintain daily summaries of their trading activities.<sup>46</sup>

In addition, the method of making the ATS trade data publicly available—a two-week delay for Tier 1 NMS stocks and a four-week delay for all other NMS stocks and OTC Equity Securities—appears reasonably designed to balance the desire to inform the public about ATS trading activity with the desire to protect the trading strategies of ATS subscribers. The Commission notes that three commenters supported this element of the proposal,<sup>47</sup> and no commenter objected to the proposed delays for publishing the trade data.<sup>48</sup>

The Commission believes that requiring a member operating an ATS to obtain for each such ATS a single, unique MPID that is designated for exclusive use by the ATS is consistent with the Act. This aspect of the proposal is reasonably designed to create a more reliable and consistent audit trail for ATS activity, from the time an order is received until the time it is executed or cancelled. This is especially important for firms that conduct both ATS and other broker-dealer activities. Currently, if a member uses a single MPID for both its ATS activity and traditional broker-dealer activity, or uses a single MPID to report the activity of two or more ATSs, it could be difficult if not impossible to track the flow of orders through these systems. The Commission agrees with FINRA's assessment that the fact that many firms already use separate MPIDs in the manner now required by this proposed rule change is evidence that the costs of using multiple MPIDs as contemplated by the proposal is not unduly burdensome. Because the proposal requires some firms to obtain and use multiple MPIDs, FINRA has proposed to make permanent certain rules, currently operating on a pilot basis, that allow firms to use multiple MPIDs. The Commission also believes that it is consistent with the Act to make those rules permanent.

Lastly, the Commission believes that the supplementary material included in Amendment No. 1 is consistent with the Act. In response to the initial proposal, one commenter questioned how the proposal would apply to fixed income ATSs, where it is common practice for trades to be given up to the broker-

dealer counterparties.<sup>49</sup> FINRA responded by providing new Supplementary Material .01 to proposed Rule 4552 explaining when transactions are attributable to the ATS for purposes of the proposal's volume reporting provisions. In general, the supplementary material would require a transaction to be included in its reporting to FINRA if the ATS executes the trade, is the "executing party" to the trade under FINRA rules,<sup>50</sup> or if the ATS otherwise matches orders constituting the trade in a manner contemplated by Rule 3b-16 under the Exchange Act<sup>51</sup> and Regulation ATS. The Commission believes that it is consistent with the Act for FINRA to attribute volume to an ATS when the transactions underlying that volume would cause the entity itself to meet the criteria of Rule 3b-16.<sup>52</sup>

## VI. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>53</sup> for approving the proposed rule change, as modified by Amendment No. 1 thereto, prior to the 30th day after publication of Amendment No. 1 in the **Federal Register**. The new supplementary material proposed in Amendment No. 1 responds to a specific issue raised in one comment letter received by the Commission in response to the Notice of Original Proposal and clarifies when trading volume is attributed to an ATS for purposes of this proposal's volume reporting requirements. Amendment No. 1 also proposed a revision to the language describing the timeframe for FINRA's implementation of the proposal; this revision is technical in nature and better clarifies FINRA's original intent. The Commission notes that, beyond two other minor technical revisions that simply update statutory references,<sup>54</sup> the rest of the proposed rule change is not being amended and was subject to a full notice-and-comment period. These revisions add clarity to the

<sup>49</sup> See KCG Letter at 4.

<sup>50</sup> See FINRA Rules 6282, 6830A, 6930B, and 6622. See also FINRA Response Letter at 9-10 (discussing when an ATS is considered an "executing party" to a trade under these rules).

<sup>51</sup> 17 CFR 240.3b-16.

<sup>52</sup> Meeting the criteria of Rule 3b-16 would in turn would cause the entity to have to register with the Commission as a national securities exchange or seek an alternative to exchange registration, such as registering as a broker-dealer and complying with Regulation ATS.

<sup>53</sup> 15 U.S.C. 78s(b)(2).

<sup>54</sup> Specifically, Amendment No. 1 would: (1) amend FINRA Rules 4552, 6160, 6170, 6480, and 6720 to replace "SEA Rule 300" with "Rule 300 of SEC Regulation ATS"; and (2) amend proposed Rule 4552 to replace "SEA Rule 600(b)(47)" with "Rule 600(b)(47) of SEC Regulation NMS."

<sup>44</sup> In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>45</sup> 15 U.S.C. 78o-3(b)(6).

<sup>46</sup> See 17 CFR 242.301(b)(8); 17 CFR 242.302.

<sup>47</sup> See Fidelity Letter at 3, ICI Letter at 2, and KCG Letter at 3.

<sup>48</sup> The Commission notes that one commenter that advocated monthly, rather than weekly, reporting also recommended a two-week publishing delay from the end of each month when the information is reported. See STA Letter at 5.



proposal and do not raise any novel regulatory concerns. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

## VII. Conclusion

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act<sup>55</sup> that the proposed rule change (SR-FINRA-2013-042), as modified by Amendment No. 1, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>56</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-01395 Filed 1-23-14; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71350; File No. SR-FINRA-2014-002]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt FINRA Rule 7640A (Data Products Offered By Nasdaq)

January 17, 2014.

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 January 9, 2014, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by 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

FINRA is proposing to adopt FINRA Rule 7640A (Data Products Offered By Nasdaq) to (1) describe FINRA's practices relating to the distribution of market data for over-the-counter ("OTC") transactions in NMS stocks generated through the operation of the FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF") by The NASDAQ OMX Group, Inc. ("NASDAQ OMX") and its affiliate, The NASDAQ Stock Market LLC ("Nasdaq"); and (2) identify Nasdaq rules relating to products that distribute FINRA/Nasdaq TRF data to third parties, and specifically Nasdaq Rules 7039 (Nasdaq Last Sale Data Feeds), 7047 (Nasdaq Basic) and 7037 (Nasdaq FilterView Service).

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and 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

###### Background

The FINRA Trade Reporting Facilities ("TRFs") are facilities solely for the reporting of OTC transactions in NMS stocks that allow the TRF "Business Members," which themselves are affiliates of self-regulatory organizations ("SROs"), to retain commercial use of the market data reported to the respective TRFs.<sup>4</sup> The operation of each

TRF is governed by a Limited Liability Company Agreement (the "LLC Agreement") between FINRA and the respective Business Member. (The LLC Agreements, which were submitted as part of the rule filings to establish the respective TRFs and were subsequently amended and restated, appear in the FINRA Manual.) Under the LLC Agreement, FINRA is the "SRO Member" and has sole regulatory responsibility for the TRF, including real-time monitoring and T+1 surveillance, development and enforcement of trade reporting rules and submission of proposed rule changes to the Commission. The Business Member under the LLC Agreement is primarily responsible for the management of the TRF's business affairs, which may not be conducted in a manner inconsistent with the regulatory and oversight functions of FINRA. Among other things, the Business Member establishes pricing for the TRF and is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from operation of the TRF. The Business Member also provides the "user facing" front-end technology used to operate the TRF and transmit in real time trade report data directly to the NMS securities information processors ("SIPs") and to FINRA for audit trail purposes.

Under the terms of the business arrangement between FINRA and the Business Members, each TRF owns data resulting from its operation. Each Business Member has a non-exclusive, irrevocable, worldwide, perpetual, royalty-free right and license to use market data generated by its TRF, other than data generated exclusively for regulatory purposes ("covered market data"),<sup>5</sup> consistent with all applicable laws, rules and regulations, and has a contractual right to sell covered market data to third parties.<sup>6</sup> Accordingly, although the TRFs are facilities of FINRA, the Business Members have the right under the contractual arrangements establishing the TRFs to develop market data products using covered market data. As each Business Member is an affiliate of an SRO, use of TRF data is conducted through the Business Member's affiliated SRO, is

(Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2007-011).

<sup>5</sup> For purposes of proposed Rule 7640A, "covered market data" would be defined as market data generated by the FINRA/Nasdaq Trade Reporting Facility, other than data generated exclusively for regulatory purposes.

<sup>6</sup> Under the TRF contracts, FINRA has a non-exclusive, irrevocable, worldwide, perpetual, royalty-free right and license to use the data generated by the TRF to fulfill its contractual rights and obligations, as well as its obligations as an SRO.

<sup>55</sup> 15 U.S.C. 78s(b)(2).

<sup>56</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> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> There currently are two TRFs in operation: the FINRA/Nasdaq TRF and the FINRA/NYSE TRF. The establishment of each TRF was subject to a proposed rule change filed with the Commission. See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (Order Approving File No. SR-NASD-2005-087); and Securities Exchange Act Release No. 55325 (February 21, 2007), 72 FR 8820 (February 27, 2007)



subject to a separate proposed rule change filed with the Commission by the affiliate in its SRO capacity and must satisfy the appropriate statutory standards.

In addition to real-time interaction with Business Member staff when operational issues arise, FINRA currently executes its SRO oversight functions by performing a three-part regularly recurring review of TRF operations. First, before initial operation of the TRF can commence, the Business Member is required to certify in writing that TRF operations will comply with all relevant FINRA rules and federal securities laws, and on a quarterly basis thereafter, the Business Member must submit its current TRF procedures and a certification of compliance with those procedures. Second, FINRA staff conducts monthly conference calls with each Business Member to review TRF operations. These monthly calls follow an established agenda, which includes, among other things, whether there were any system outages or issues since the prior monthly conference call (and if so, to confirm that they were reported to FINRA and the SEC, as applicable), the status of pending systems changes, and TRF market data products, including data latency and whether the Business Member has or is developing any new products that would use TRF data. Third, FINRA oversees a regular assessment cycle and extensive review of TRF operations, as measured against the TRF business requirements document and coding guidelines established by FINRA, by an outside independent audit firm. FINRA also will require the Business Members to begin submitting on a quarterly basis an attestation that (1) identifies all products that use TRF data, and (2) certifies that the Business Member has no other products that use TRF data and that any future products that use TRF data will be developed in consultation with FINRA.

Under the TRF framework, the Business Member must ensure, among other things, that the distribution and sale of market data products that use TRF data are consistent with the requirements of the Act. In addition to FINRA's general oversight of TRF operations, and in furtherance of FINRA's SRO responsibilities with respect to OTC market data, FINRA requires that each Business Member (and its SRO affiliate) make specific commitments and undertakings with respect to its products that use TRF data. Among other things, the Business Member must represent that, consistent with the Commission's interpretation of Rule 603(a) under SEC Regulation NMS,

it will not transmit any TRF transaction data to a vendor or user any sooner than the TRF transmits the data to the SIPs.<sup>7</sup> The Business Member also must have in place procedures and controls to ensure that its products that use TRF data are not distributed prior to dissemination of TRF data to the SIPs, including monitoring for compliance with this obligation.

In this regard, NASDAQ OMX, as the Business Member for the FINRA/Nasdaq TRF, has implemented a tool to monitor for potential latency by comparing the time of dissemination of FINRA/Nasdaq TRF data to the SIPs and to Nasdaq's proprietary data feeds that use corresponding TRF data (e.g., the Nasdaq Last Sale feeds) that is capable of detecting whether data was distributed to a proprietary vendor or user sooner than to the SIP. In addition, NASDAQ is developing the capability to monitor overall performance of respective data feeds on a real-time basis. FINRA and NASDAQ OMX are also in the process of developing escalation procedures in the event that certain latency thresholds are met. It is anticipated that these tools and procedures would be used for purposes of monitoring for potential latency for any future products developed by NASDAQ OMX that use and distribute TRF data on a real-time basis (provided such data is also required to be provided to the SIPs).

#### Proposed FINRA Rule 7640A

FINRA is proposing to adopt new Rule 7640A to address the distribution of FINRA/Nasdaq TRF data in market data products developed by NASDAQ OMX, as the Business Member, and its wholly owned SRO subsidiary, Nasdaq.<sup>8</sup> As noted above, the FINRA/Nasdaq TRF

is a facility of FINRA, and FINRA/Nasdaq TRF data is OTC data for which FINRA is responsible under the Act. However, any market data products would be distributed and sold by NASDAQ OMX, the Business Member, through Nasdaq, its SRO subsidiary, not FINRA. As such, paragraphs (a) and (b) of proposed Rule 7640A codify the contractual arrangements between FINRA and NASDAQ OMX and provide for the overall structure relating to the FINRA/Nasdaq TRF and the permissible use of FINRA/Nasdaq TRF data. For example, proposed paragraph (b) provides that fees for market data products that use covered market data are charged by Nasdaq under Nasdaq rules. Such fees must be adopted pursuant to a proposed rule change submitted to the Commission pursuant to Section 19(b) of the Act, and Nasdaq must demonstrate that the fees are consistent with the requirements of the Act, including that they are reasonable, equitably allocated and not unfairly discriminatory. Paragraph (c) of proposed Rule 7640A identifies Nasdaq rules relating to products that use FINRA/Nasdaq TRF data, and specifically Nasdaq Rules 7039, 7047 and 7037.

#### Nasdaq Last Sale Data Feeds

The Nasdaq Last Sale ("NLS") market data product combines both Nasdaq Market Center and FINRA/Nasdaq TRF last sale data and provides real-time execution price, volume and time information for each reported sale. The NLS product currently operates on a pilot basis pursuant to Nasdaq Rule 7039. Nasdaq has submitted a companion filing, SR-NASDAQ-2014-006, proposing to make the NLS product pilot permanent.

The NLS product provides distributors access to real-time market data through multiple pricing models that allow for flexible and very broad distribution to millions of investors via the internet and television at no cost to the end user. Based upon information from NLS distributors, Nasdaq has represented that since its launch in 2008, the NLS data has been viewed by millions of investors. Thus, FINRA believes that the NLS product has increased the availability of market data to individual investors during the pilot period.

As further detailed in its companion filing, Nasdaq has established two pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Nasdaq also has established a cap

<sup>7</sup> Rule 603(a), 17 CFR 242.603(a), provides as follows:

(1) Any exclusive processor, or any broker or dealer with respect to information for which it is the exclusive source, that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor shall do so on terms that are fair and reasonable.

(2) Any national securities exchange, national securities association, broker, or dealer that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor, broker, dealer, or other persons shall do so on terms that are not unreasonably discriminatory.

Rule 603 would not prevent the distribution of data that is not required to be provided to the SIPs, provided that such distribution is not unreasonably discriminatory and is otherwise consistent with the Exchange Act.

<sup>8</sup> If NYSE Market, Inc., as the FINRA/NYSE TRF Business Member, and New York Stock Exchange LLC, its SRO affiliate, develop products using FINRA/NYSE TRF data, FINRA will file a separate proposed rule change to adopt a similar rule in the FINRA Rule 7600B Series applicable to the FINRA/NYSE TRF.

on the monthly fee, currently set at \$50,000 per month, for the NLS product.

Because the NLS product provides a subset of the same last sale data that is disseminated by the SIPs, the feeds are structured so that data is not provided to the NLS product sooner than it is provided to the SIPs. NASDAQ OMX, as the Business Member, is responsible for monitoring for data latency, and to date, using the monitoring tool described above, no latency has been detected between the dissemination of FINRA/Nasdaq TRF data to the SIPs and to the NLS product.

#### Nasdaq Basic

Nasdaq Basic under Nasdaq Rule 7047 is a real-time data feed combining Nasdaq's Best Bid and Offer ("QBBO") with Nasdaq Market Center last sale information. Nasdaq has submitted a companion filing, SR-NASDAQ-2014-005, to authorize inclusion of FINRA/Nasdaq TRF data in the product.<sup>9</sup> As described therein, the product provides information similar to that provided by the SIPs' consolidated "Level 1" products, but without information from exchanges other than Nasdaq or TRFs other than the FINRA/Nasdaq TRF.

Nasdaq Rule 7047 sets forth a number of pricing models for Nasdaq Basic: (1) A model in which a charge is assessed for each subscriber to the product to receive unlimited access,<sup>10</sup> (2) a model in which a per query fee is assessed for subscribers who expect to make more limited use of the product, (3) an enterprise license model under which a distributor may provide Nasdaq Basic to an unlimited number of subscribers with whom the distributor has a brokerage relationship, and (4) a derived data fee under which a vendor may distribute data derived from Nasdaq Basic to an unlimited number of non-professional subscribers.

Because the NLS product is the source of the FINRA/Nasdaq TRF last sale information included in Nasdaq Basic, the latency monitoring performed by the Business Member with respect to the NLS product also provides a means to monitor the dissemination of data through the Nasdaq Basic product. As noted above, to date the Business Member has detected no latency between the dissemination of FINRA/

Nasdaq TRF data to the SIPs and to the NLS product.

#### Nasdaq FilterView

The Nasdaq FilterView Service ("Nasdaq FilterView") under Nasdaq Rule 7037 allows a distributor to receive a subset of any existing real-time data feed distributed by Nasdaq. Thus, the service could be used to receive FINRA/Nasdaq TRF data derived from NLS or Nasdaq Basic. Nasdaq FilterView was originally adopted in 2006<sup>11</sup> and has not been modified since its initial establishment. Nasdaq FilterView is available for a subscription fee of \$500 per month per subset of data, in addition to the fees associated with the relevant underlying data feed. There are no incremental user charges for distributors related to use of Nasdaq FilterView.

Because distribution of data through Nasdaq FilterView may be more streamlined than the distribution of data through the data feeds from which it may be derived, such as NLS or Nasdaq Basic, Nasdaq has committed to perform separate latency monitoring of the dissemination of TRF last sale information through Nasdaq FilterView. Although Nasdaq FilterView is not a distinct data product, but rather a means of receiving a modified form of other data products, Nasdaq Rule 7037 is nonetheless cross-referenced in proposed Rule 7640A.

FINRA believes that using FINRA/Nasdaq TRF data in the NLS, Nasdaq Basic and Nasdaq FilterView data products will enhance transparency and increase the information regarding trading activity that is available to market participants and investors. FINRA also believes that the products satisfy the requirement that FINRA/Nasdaq TRF transaction data not be disseminated to a vendor or user any sooner than such data is transmitted to the SIPs. NASDAQ OMX, as the Business Member, must comply with the requirements and commitments described above, including monitoring for latency, and as part of FINRA's regular oversight of the FINRA/Nasdaq TRF, FINRA monitors for such compliance.

FINRA anticipates that for any future products that use FINRA/Nasdaq TRF data, Nasdaq will submit a proposed rule change and FINRA will submit a companion filing proposing to amend Rule 7640A(c). In addition, NASDAQ OMX and Nasdaq will be required to

make the specific commitments and undertakings described above regarding the inclusion of TRF data in any new product.<sup>12</sup>

FINRA has filed the proposed rule change for immediate effectiveness and requested waiver of the 30-day operative delay. FINRA is proposing that the proposed rule change will be operative immediately upon filing.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>13</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will promote market transparency by allowing the development, consistent with the guidelines set forth in proposed Rule 7640A, of innovative market data products using FINRA/Nasdaq TRF data for distribution to FINRA/Nasdaq TRF participants, other market participants and the investing public.

FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>14</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. As noted above, the fees for the NLS, Nasdaq Basic and Nasdaq FilterView products will not be charged by FINRA under FINRA rules, but rather will be charged by Nasdaq under Nasdaq rules. Such fees must be adopted pursuant to a proposed rule change submitted to the Commission pursuant to Section 19(b) of the Act, and Nasdaq must demonstrate that the fees are consistent with the requirements of the Act, including that they are reasonable, equitably allocated and not unfairly discriminatory. FINRA believes that the proposed rule change is consistent with the Act because the fees for the NLS, Nasdaq Basic and Nasdaq FilterView products are not mandatory

<sup>9</sup> Nasdaq has determined through an internal review that the Nasdaq Basic product currently includes and has included since its inception last sale transaction reports for the FINRA/Nasdaq TRF; however, current Nasdaq Rule 7047 does not reflect the inclusion of TRF data in the Nasdaq Basic product.

<sup>10</sup> The amount of the applicable monthly subscriber fee depends on whether the subscriber is a market professional or a non-professional.

<sup>11</sup> See Securities Exchange Act Release No. 54286 (August 8, 2006), 71 FR 46955 (August 15, 2006) (Notice of Filing and Immediate Effectiveness; File No. SR-NASDAQ-2006-028).

<sup>12</sup> FINRA notes that FINRA and Nasdaq occasionally provide data to the Commission, other government agencies and members of the academic community for the purpose of studying the market. While in the latter case, data generally is in an aggregated format that does not allow identification of the activity of specific market participants, FINRA on occasion may provide attributed data to the academic community pursuant to a non-disclosure agreement.

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).

<sup>14</sup> 15 U.S.C. 78o-3(b)(5).

fees and will apply uniformly to all members that elect to subscribe to the products. In addition, FINRA believes that, as described more fully in Nasdaq's filings, the existence of numerous alternatives to NLS and Nasdaq Basic (or Nasdaq FilterView, through which FINRA/Nasdaq TRF data derived from NLS or Nasdaq Basic can be obtained)—including real-time consolidated data, free delayed consolidated data and proprietary data from other sources—is a strong incentive to Nasdaq to avoid setting unreasonable or discriminatory fees.

Finally, FINRA believes that use of FINRA/Nasdaq TRF market data, as set forth in proposed Rule 7640A, is consistent with Rule 603(a) of SEC Regulation NMS, which requires, among other things, that distributions of certain data by FINRA not be unreasonably discriminatory.<sup>15</sup> The Commission clarified in its adopting release that SEC Regulation NMS prohibits an SRO from transmitting quotation and transaction data to a vendor or user any sooner than it transmits the data to a network processor. As discussed above, NASDAQ OMX, as the Business Member, and Nasdaq, its SRO affiliate, must ensure that distribution of market data products that use FINRA/Nasdaq TRF data is consistent with this requirement, and FINRA will require that NASDAQ OMX and Nasdaq make specific commitments and undertakings, including monitoring for potential data latency, with respect to all FINRA/Nasdaq TRF data products.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to provide a framework to increase the amount of market data available from the FINRA/Nasdaq TRF while ensuring that the dissemination of such data by the Business Member is subject to the oversight of FINRA. FINRA believes that, as described more fully in Nasdaq's filings, the existence of numerous alternatives to NLS and Nasdaq Basic (or Nasdaq FilterView, through which FINRA/Nasdaq TRF data derived from NLS or Nasdaq Basic can be obtained)—including real-time consolidated data, free delayed consolidated data and proprietary data from other sources—is a strong incentive to Nasdaq to avoid setting unreasonable or discriminatory fees. Subscription to the NLS, Nasdaq

Basic and Nasdaq FilterView products is wholly voluntary, and members can elect not to buy any products that, in their determination, would not add value or enhance their business model.

#### *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**

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>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</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-FINRA-2014-002 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2014-002. 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-FINRA-2014-002 and should be submitted on or before February 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2014-01403 Filed 1-23-14; 8:45 am]

**BILLING CODE 8011-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-71345; File No. SR-NYSE-2014-01]**

#### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Extend the Operation of its New Market Model Pilot Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or July 31, 2014**

January 17, 2014.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the

<sup>15</sup> See Rule 603(a)(2) of SEC Regulation NMS.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</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 January 6, 2014, 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 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 extend the operation of its New Market Model Pilot, currently scheduled to expire on January 31, 2014, until the earlier of Securities and Exchange Commission (“Commission”) approval to make such pilot permanent or July 31, 2014.

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 extend the operation of its New Market Model Pilot (“NMM Pilot”),<sup>4</sup> currently scheduled to

expire on January 31, 2014, until the earlier of Commission approval to make such pilot permanent or July 31, 2014.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE MKT LLC.<sup>5</sup>

##### **Background<sup>6</sup>**

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange’s enhanced market model. Certain of the enhanced market model changes were implemented through a pilot program.

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.<sup>7</sup> The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest.<sup>8</sup>

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points to interact with interest and provide price improvement to orders in the Exchange’s system. This schedule is known as the DMM Capital Commitment Schedule (“CCS”).<sup>9</sup> CCS provides the Display Book<sup>10</sup> with the amount of shares that the DMM is

willing to trade at price points outside, at and inside the Exchange Best Bid or Best Offer (“BBO”). CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange’s BBO. During the operation of the NMM Pilot, orders or portions thereof that establish priority<sup>11</sup> retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

The NMM Pilot was originally scheduled to end operation on October 1, 2009, or such earlier time as the Commission may determine to make the rules permanent. The Exchange filed to extend the operation of the Pilot on several occasions in order to prepare a rule filing seeking permission to make the above described changes permanent.<sup>12</sup> The Exchange is currently still preparing such formal submission but does not expect that filing to be completed and approved by the Commission before January 31, 2014.

##### **Proposal To Extend the Operation of the NMM Pilot**

The NYSE established the NMM Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and to add a new competitive market participant. The Exchange believes that the NMM Pilot allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the NMM Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot until July 31, 2014, in order to allow the Exchange time to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

The proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

<sup>11</sup> See NYSE Rule 72(a)(ii).

<sup>12</sup> See *supra* note 4.

FR 612 (January 5, 2011) (SR-NYSE-2010-86) (extending Pilot to August 1, 2011); 64761 (June 28, 2011), 76 FR 39147 (July 5, 2011) (SR-NYSE-2011-29) (extending Pilot to January 31, 2012); 66046 (December 23, 2011), 76 FR 82340 (December 30, 2011) (SR-NYSE-2011-65) (extending Pilot to July 31, 2012); 67494 (July 25, 2012), 77 FR 45408 (July 31, 2012) (SR-NYSE-2012-26) (extending Pilot to January 31, 2013); 68558 (January 2, 2013), 78 FR 1288 (January 8, 2013) (SR-NYSE-2012-75) (extending Pilot to July 31, 2013); and 69813 (June 20, 2013), 78 FR 38753 (June 27, 2013) (SR-NYSE-2013-43) (extending Pilot to January 31, 2014).

<sup>5</sup> See SR-NYSEMKT-2014-02.

<sup>6</sup> The information contained herein is a summary of the NMM Pilot. See *supra* note 4 for a fuller description.

<sup>7</sup> See NYSE Rule 103.

<sup>8</sup> See NYSE Rule 60; see also NYSE Rules 104 and 1000.

<sup>9</sup> See NYSE Rule 1000.

<sup>10</sup> The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46). See also Securities Exchange Act Release Nos. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR-NYSE-2009-100) (extending Pilot to November 30, 2009); 61031 (November 19, 2009), 74 FR 62368 (November 27, 2009) (SR-NYSE-2009-113) (extending Pilot to March 30, 2010); 61724 (March 17, 2010), 75 FR 14221 (March 24, 2010) (SR-NYSE-2010-25) (extending Pilot to September 30, 2010); 62819 (September 1, 2010), 75 FR 54937 (September 9, 2010) (SR-NYSE-2010-61) (extending Pilot to January 31, 2011); 63616 (December 29, 2010), 76

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Sections 6(b)(5) of the Act,<sup>14</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change is designed to facilitate transactions in securities and to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. The Exchange also believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because it seeks to extend a pilot program that has already been approved by the Commission. Moreover, requesting an extension of the NMM Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b-4 approval process. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>15</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance

of the purposes of the Act. The Exchange believes that extending the operation of the NMM Pilot will enhance competition among liquidity providers and thereby improve execution quality on the Exchange. The Exchange will continue to monitor the efficacy of the program during the proposed extended pilot period.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting the services it offers and the requirements it imposes to remain competitive with other U.S. equity exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

### *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>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>18</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>19</sup> the Commission may designate a shorter

time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.<sup>20</sup>

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.

## 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-NYSE-2014-01 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2014-01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

<sup>20</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78f(b)(8).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 17 CFR 240.19b-4(f)(6)(iii).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSE-2014-01 and should be submitted on or before February 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-01399 Filed 1-23-14; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71343; File No. SR-BOX-2014-03]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Add Rule 7280 (Bulk Cancellation of Trading Interest)

January 17, 2014.

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 January 6, 2014, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Rule 7280 (Bulk Cancellation of Trading Interest) to codify and clarify a protection mechanism already available on the Exchange. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://boxexchange.com>.

#### 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 proposing to add BOX Rule 7280 (Bulk Cancellation of Trading Interest) to codify and clarify protection mechanisms already available on the Exchange. The Exchange currently has the ability to cancel all of a Participant's bids, offers and orders when directed by the Participant. In addition, when requested by the Participant, the Exchange can block any incoming orders from the Participant. The Exchange believes that these bulk cancellation mechanisms provide value to Participants by helping them quickly mitigate the risk of erroneous trades when faced with technology issues.

The Exchange is proposing to add BOX Rule 7280 to codify these existing mechanisms and provide clarity on how they function. As set forth in proposed Rule 7280, when instructed by a Participant, the Exchange can simultaneously cancel all the bids, offers, and orders of a Participant in all series in all classes of options. In order for the Exchange to remove the bids, offers and orders of a Participant, the Participant must call the BOX Market

Operations Center ("MOC").<sup>3</sup> The Exchange believes requiring Participants to contact the MOC directly is necessary since the Participant could be experiencing difficulties connecting to the Exchange and may have no other method of contacting the Exchange. Additionally, if the Participant is experiencing system issues they may not be confident in their ability to send a message to the Trading Host directly. Therefore, the Exchange believes requiring Participants to contact the MOC directly for all bulk cancellation requests will lead to less investor confusion whenever these situations occur.

Proposed Rule 7280 also states that when requested, the Exchange will block all new incoming orders submitted by the Participant until the Participant contacts the MOC to have the block removed. The Exchange believes this feature provides an additional layer of protection by blocking new orders that could have been sent in error or with incorrect prices when a Participant's systems were compromised. Blocking all new incoming orders can give the Participant time to address the particular system issue without having to continually cancel any new orders being sent to the Exchange. Once the issue is resolved, the Participant must contact the MOC to remove the block.

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>4</sup> in general, and Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 cancelling all bids, offers, and orders when requested by a Participant reduces the risk of unintended executions and executions at erroneous prices, thereby serving to protect investors and the public interest. The Exchange believes that the proposed rule assists with the maintenance of fair and orderly markets by helping to

<sup>3</sup> The term "Market Operations Center" or "MOC" means the BOX Market Operations Center, which provides market support for Options Participants during the trading day. See BOX Rule 100(a)(31).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>21</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.

mitigate the potential risks associated with the execution of orders when a Participant is experiencing system issues. In addition, the ability for the Exchange to block new incoming orders provides an additional layer of protection for the Participant against unintended executions, thereby promoting a fair and orderly market.

#### *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 the proposal will provide Participants with additional protection from anomalous executions when the Participant is experiencing system problems or difficulties connecting with the Trading Host. The Exchange notes that this functionality is available to all Participants. Additionally, this functionality does not require any changes or upgrades to any Participant's system. Thus, the Exchange does not believe the proposal creates any significant impact on 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 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: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, 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) thereunder.<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.

### **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-BOX-2014-03 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BOX-2014-03. 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-BOX-2014-03 and should be submitted on or before February 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-01397 Filed 1-23-14; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-71349; File No. SR-NYSEArca-2014-05]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect a Change to the Means of Achieving the Investment Objective Applicable to the STAR<sup>TM</sup> Global Buy-Write ETF**

January 17, 2014.

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 January 15, 2014, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to reflect a change to the means of achieving the investment objective applicable to the STAR<sup>TM</sup> Global Buy-Write ETF. The shares of the Fund are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares").

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its 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 met this requirement.

<sup>8</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.



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 Commission has approved the listing and trading on the Exchange of shares ("Shares") of the Fund under NYSE Arca Equities Rule 8.600<sup>4</sup> ("Managed Fund Shares").<sup>5</sup> The Shares are offered by the AdvisorShares Trust ("Trust"), which is established as a Delaware statutory trust and is registered with the Commission as an open-end investment company.<sup>6</sup> AdvisorShares Investments, LLC is the investment adviser ("Adviser") to the Fund. Partnervest Advisory Services, LLC serves as sub-adviser for the Fund ("Sub-Adviser"). The Shares of the Fund are currently listed and traded on the Exchange.

In this proposed rule change, the Exchange proposes to make the following change, described below, to the investment strategy the Sub-Adviser will use to obtain the Fund's investment

objective (the "Proposed Amendment").<sup>7</sup> As stated in the Prior Release, according to the Registration Statement, the Fund is a "fund-of-funds" and, under normal market conditions, intends to invest at least 60% of its total assets in exchange-traded funds ("ETFs")<sup>8</sup> and exchange-traded notes ("ETNs")<sup>9</sup> that seek to track a diversified basket of global indices and investment sectors and in exchange-traded pooled investment vehicles that invest directly in commodities or currencies and that are registered pursuant to the 1933 Act (together with ETFs and ETNs, "Underlying ETPs").<sup>10</sup>

As stated in the Prior Release, the Fund, through its investment in Underlying ETPs, may purchase equity securities traded in the U.S. on registered exchanges or the over-the-counter market.<sup>11</sup> Going forward, while continuing to invest, under normal market conditions, at least 60% of its total assets in Underlying ETPs, as described above, the Fund proposes to also invest directly in exchange-traded equity securities other than Underlying ETPs. All such other exchange-traded equity securities will be listed and traded in the U.S. on national securities exchanges. As stated in the Prior Release, except for Underlying ETPs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S.-registered issues.

The Exchange represents that trading in the Shares will be subject to the

existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>12</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 applicable federal securities laws.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in equity securities (including Underlying ETPs and other exchange-traded equity securities), and exchange-traded options with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in equity securities (including Underlying ETPs and other exchange-traded equity securities), and exchange-traded options from such markets and other entities. In addition, the Exchange may obtain information regarding trading in equity securities (including Underlying ETPs and other exchange-traded equity securities), and exchange-traded options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

For purposes of calculating net asset value ("NAV") of Shares of the Fund, price information for valuation of equity securities held by the Fund will be taken from the exchange where the security is primarily traded. Quotation and last-sale information for the equity securities held by the Fund will be available via the Consolidated Tape Association ("CTA") high-speed line and from major market data vendors.

The Adviser represents that there is no change to the Fund's investment objective. The Adviser also represents that the Proposed Amendment is consistent with the Exemptive Order under the 1940 Act and the rules thereunder. Except for the changes noted regarding the Proposed Amendment above, all other facts presented and representations made in the Prior Release remain unchanged.

The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

Terms used herein but not otherwise defined shall have the meanings

<sup>4</sup> The Commission originally approved the listing and trading of the Shares on the Exchange in Securities Exchange Act Release No. 67552 (August 1, 2012), 77 FR 47131 (August 7, 2012) (SR-NYSEArca-2012-55) ("Prior Order"). Notice of the proposed rule change was published in Securities Exchange Act Release No. 67183 (June 12, 2012), 77 FR 36314 (June 18, 2012) (SR-NYSEArca-2012-55) ("Prior Notice" and, together with the Prior Order, the "Prior Release").

<sup>5</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment advisor consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>6</sup> The Trust is registered under the 1940 Act. On October 28, 2011, the Trust filed an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) ("1933 Act") and under the 1940 Act relating to the Fund (File Nos. 333-157876 and 811-22110) ("Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28822 (July 20, 2009) (File No. 812-13488) ("Exemptive Order").

<sup>7</sup> The Proposed Amendment described herein will be effective upon filing with the Commission of another amendment to the Trust's Registration Statement or supplement thereto. See note 6, *supra*. The Adviser represents that the Adviser and the Sub-Adviser have managed and will continue to manage the Fund in the manner described in the Prior Release, and the Fund will not implement the Proposed Amendment described herein until the instant proposed rule change is operative.

<sup>8</sup> For purposes of this proposed rule change, and as stated in the Prior Release, ETFs are securities registered under the 1940 Act such as those listed and traded on the Exchange under NYSE Arca Equities Rules 5.2(j)(3), 8.100, and 8.600.

<sup>9</sup> For purposes of this proposed rule change, and as stated in the Prior Release, ETNs are securities that are registered pursuant to the 1933 Act such as those listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 5.2(j)(6).

<sup>10</sup> Underlying ETPs include, in addition to ETFs and ETNs, the following securities: Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and closed-end funds. The Underlying ETPs are all listed and traded in the U.S. on registered exchanges.

<sup>11</sup> The Prior Release also states that the Fund invests in call options on Underlying ETPs. All such options are traded in the U.S. on national securities exchanges.

<sup>12</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.



ascribed to them in the Rule 19b-4 filing underlying the Prior Release.<sup>13</sup>

The Exchange notes that the Commission has previously approved for listing other actively-managed exchange-traded funds that invest in U.S. exchange-listed equity securities.<sup>14</sup>

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>15</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 8.600. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. 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 applicable federal securities laws.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in equity securities (including Underlying ETPs and other exchange-traded equity securities), and exchange-traded options 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 equity securities (including Underlying ETPs and other exchange-traded equity securities), and exchange-traded options from such markets and other entities. In addition, the Exchange may obtain information regarding trading in equity securities (including Underlying ETPs and other exchange-traded equity securities), and exchange-traded options from markets and other entities that are members of ISG or with which the

Exchange has in place a comprehensive surveillance sharing agreement.

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 Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The Adviser represents that the purpose of the proposed rule change is to provide additional flexibility to the Sub-Adviser to meet the Fund's investment objective by investing directly in U.S. exchange-listed equity securities.

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 continued listing and trading of an actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

### *(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 believes the proposed rule change will permit the Adviser and Sub-Adviser additional flexibility in achieving the Fund's investment objective, and will permit the Fund to better compete with other issues of Managed Fund Shares that hold equity securities traded in the U.S. on national securities exchanges.

### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, 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>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay to accommodate certain investments by the Fund and Exchange trading of the Shares of the Fund without delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>18</sup> As stated in the proposal, the proposed changes do not alter the Fund's investment objective. Under the proposal, the Fund seeks to invest directly in exchange-traded equity securities other than Underlying ETPs. The Exchange states that all exchange-traded equity securities, in addition to Underlying ETPs, in which the Fund will invest will be listed and traded in the U.S. on national securities exchanges. In addition, the Exchange confirms that, except for Underlying ETPs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S.-registered issues. The Exchange represents that, except for the changes in the proposal, all other facts and representations made in the Prior Release remain unchanged and that the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. Because the proposed changes do not alter the Fund's investment objective and do not raise any novel or unique regulatory issues, the Commission designates the proposed rule change as operative 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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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>18</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>13</sup> See note 4, *supra*.

<sup>14</sup> See, e.g., Securities Exchange Act Release No. 71067 (December 12, 2013), 78 FR 76669 (December 18, 2013) (SR-NYSEArca-2013-105) (order approving listing and trading on NYSE Arca of SPDR MFS ETFs).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

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-NYSEArca-2014-05 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-NYSEArca-2014-05. 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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-NYSEArca-2014-05 and should be submitted on or before February 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Kevin M. O'Neill,

*Deputy Secretary.*

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#### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR-2014-0003]

#### 2013 Special 301 Out-of-Cycle Review of Spain: Request for Public Comments

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for written submissions.

**SUMMARY:** In the 2013 Special 301 Report ([www.ustr.gov](http://www.ustr.gov)), the Office of the United States Trade Representative (USTR) announced that, in order to monitor progress on specific intellectual property rights (IPR) issues, an Out-of-Cycle Review (OCR) would be conducted for El Salvador and Spain. USTR requests written submissions from the public concerning any act, policy, or practice that is relevant to the decision regarding whether Spain should be identified under Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242).

**DATES:** Friday, February 14, 2014—Deadline for the public, except foreign governments, to submit written comments.

Friday, February 21, 2014—Deadline for foreign governments to submit written comments.

Please note that on January 3, 2014, USTR issued a request for comments from the public and provided notice of a public hearing related to the 2014 Special 301 Review (<https://federalregister.gov/a/2013-31487> (docket number USTR-2013-0040)). The public is not required to respond to both notices. Written submissions related to Spain filed under docket number USTR-2013-0040 will be taken into consideration in this Out-of-Cycle Review.

**ADDRESSES:** All written comments must be in English and submitted electronically via <http://www.regulations.gov>, docket number USTR-2014-0003. Please specify "2013 Special 301 Out-of-Cycle Review of Spain" in the "Type Comment" field on <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** George York, Deputy Assistant USTR for Intellectual Property and Innovation,

Office of the United States Trade Representative, at (202) 395-6126.

#### SUPPLEMENTARY INFORMATION:

##### 1. Background

Section 182 of the Trade Act requires USTR to identify countries that deny adequate and effective protection of IPR or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. The provisions of Section 182 are commonly referred to as the "Special 301" provisions of the Trade Act.

Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as Priority Foreign Countries. In addition, USTR has created a "Priority Watch List" and a "Watch List" under Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property.

In the 2013 Special 301 Report, USTR noted that although Spain was not listed in the report, USTR would conduct an OCR of Spain focusing in particular on Spain's concrete steps to combat copyright piracy over the Internet. An OCR is a tool that USTR uses to encourage progress on IPR issues of concern. It provides an opportunity for heightened engagement with a trading partner to address and remedy such issues. Successful resolution of specific IPR issues of concern or lack of action on that concern can lead to a change in a trading partner's status on a Special 301 list outside of the typical time frame for the annual Special 301 Report.

##### 1. Written Comments

###### *a. Requirements for Written Comments*

To facilitate the review, written comments should be as detailed as possible and provide all necessary information for identifying and assessing the effect of the acts, policies, and practices of Spain. USTR requests that interested parties provide specific references to laws, regulations, policy statements, executive, presidential or other orders, administrative, court or other determinations that should factor in the review. USTR also requests that submissions include data, loss estimates, and other information regarding the economic impact on the United States, U.S. industry, and the U.S. workforce caused by the denial of adequate and effective intellectual

<sup>19</sup> 17 CFR 200.30-3(a)(12).

property protection. Comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses.

#### b. Filing Instructions

Comments must be in English. All comments should be sent electronically via <http://www.regulations.gov>, docket number USTR–2014–0003. To submit comments to <http://www.regulations.gov>, locate the docket (folder) by entering the number USTR–2014–0003 in the “Enter Keyword or ID” window at the <http://www.regulations.gov> home page and click “Search.” The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting “Notice” under “Document Type” on the left side of the search-results page, and click on the link entitled “Comment Now!”. The <http://www.regulations.gov> site provides the option of submitting comments by filling in a “Type comment” field, or by attaching a document. USTR requests that comments be provided in an attached document. If a document is attached, please type “2013 Special 301 Out-of-Cycle Review of Spain” in the “Type Comment” field. Please submit documents prepared in (or compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. If the submission was prepared in a compatible format, please indicate the name of the relevant application in the “Type comment” field. For further information on using the <http://www.regulations.gov> Web site, please select “How to use Regulations.gov” on the bottom of any page. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

#### c. Business Confidential Information

A submitter requesting that information contained in a comment submitted by that submitter be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. The filenames of both documents should reflect their status—“BCI” for the business confidential version and “PUBLIC” for the public version. In the document, confidential business information must be clearly designated as such, the submission must

be marked “BUSINESS CONFIDENTIAL” at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, the submitter should write “Business Confidential” in the “Type Comment” field. Anyone submitting a comment containing business confidential information must also submit, as a separate submission, a non-business confidential version of the submission, indicating where the business confidential information has been redacted. The non-business confidential version will be placed in the docket at <http://www.regulations.gov> and be available for public inspection

#### Public Inspection of Comments

Submissions will be placed in the docket and open to public inspection pursuant to 15 *CFR* 2006.13, except business confidential information exempt from public inspection in accordance with 15 *CFR* 2006.15. Submissions may be viewed on the [www.regulations.gov](http://www.regulations.gov) Web site by entering docket number USTR–2014–0003 in the search field on the home page.

Susan F. Wilson,

Director for Intellectual Property and Innovation.

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### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS471]

#### WTO Dispute Settlement Proceeding Regarding Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (“USTR”) is providing notice that on December 3, 2013, the People’s Republic of China (“China”) requested consultations with the United States under the *Marrakesh Agreement Establishing the World Trade Organization* (“WTO Agreement”) concerning antidumping measures on the following products from China: certain coated paper suitable for high-quality print graphics using sheet-fed presses, certain oil country tubular goods, high pressure steel cylinders, polyethylene terephthalate film, sheet, and strip, aluminum extrusions, certain

frozen and canned warmwater shrimp,<sup>1</sup> certain new pneumatic off-the-road tires, crystalline silicon photovoltaic cells, whether or not assembled into modules, diamond sawblades and parts thereof, multilayered wood flooring, narrow woven ribbons with woven selvedge, polyethylene retail carrier bags, and wooden bedroom furniture.

That request may be found at [www.wto.org](http://www.wto.org) in a document designated as WT/DS471/1. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before February 14, 2014, to be assured of timely consideration by USTR.

**ADDRESSES:** Public comments should be submitted electronically to [www.regulations.gov](http://www.regulations.gov), docket number USTR–2014–0001. If you are unable to provide submissions by [www.regulations.gov](http://www.regulations.gov), please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

**FOR FURTHER INFORMATION CONTACT:** J. Daniel Stirk, Associate General Counsel, or Mayur Patel, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

**SUPPLEMENTARY INFORMATION:** USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, the panel would hold its meetings in Geneva, Switzerland.

#### Major Issues Raised by China

On December 3, 2013, China requested consultations concerning antidumping measures on a number of products from China, including certain coated paper suitable for high-quality

<sup>1</sup> Although China describes this measure as relating to “frozen and canned warmwater shrimp,” the relevant antidumping duty order does not cover canned warmwater shrimp, following the International Trade Commission’s negative material injury determination with respect to canned warmwater shrimp. See *Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People’s Republic of China*, 70 FR 5149, 5150 (Feb. 1, 2005).

print graphics using sheet-fed presses (coated paper), certain oil country tubular goods (OCTG), high pressure steel cylinders (steel cylinders), polyethylene terephthalate film, sheet, and strip (PET film), aluminum extrusions, certain frozen and canned warmwater shrimp (shrimp), certain new pneumatic off-the-road tires (tires), crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), diamond sawblades and parts thereof (sawblades), multilayered wood flooring (flooring), narrow woven ribbons with woven selvage (ribbons), polyethylene retail carrier bags (bags), and wooden bedroom furniture (furniture).

With respect to the antidumping measures on coated paper, OCTG, and steel cylinders, China challenges the application by the Department of Commerce ("Commerce") in investigations of what China describes as a "targeted dumping methodology" and the use of "zeroing" in connection with the application of such methodology. China's challenge includes Commerce's final determinations in the antidumping investigations of these products, any modification, replacement, or amendment of such final determinations, and "any closely connected, subsequent measures" that involve the "targeted dumping methodology."

With respect to the antidumping measure on PET film, China challenges Commerce's application in an administrative review of what China describes as a "targeted dumping methodology" and the use of "zeroing" in connection with the application of such methodology. China's challenge includes Commerce's final determination in the antidumping duty administrative review of PET film, any modification, replacement, or amendment of such final determination, and "any closely connected, subsequent measures" that involve the "targeted dumping methodology."

With respect to the antidumping measures on aluminum extrusions, coated paper, shrimp, tires, OCTG, solar cells, sawblades, steel cylinders, wood flooring, ribbons, bags, PET film, and furniture, China challenges Commerce's application in investigations and administrative reviews of what China describes as a "single rate presumption for non-market economies." China's challenge includes Commerce's final determinations, any modification, replacement, or amendment of such final determinations, and "any closely connected, subsequent measures" that involve the application of the "single

rate presumption." China also challenges the "single rate presumption" "as such," and alleges that it has been consistently applied pursuant to the regulation set forth in 19 CFR 351.107(d), Import Administration Policy Bulletin Number 05.1 of 5 April 2005, and the Import Administration Antidumping Manual, 2009, Chapter 10.

With respect to the antidumping measures on aluminum extrusions, coated paper, shrimp, tires, OCTG, solar cells, sawblades, steel cylinders, wood flooring, ribbons, bags, PET film, and furniture, China challenges Commerce's application in investigations and administrative reviews of what China describes as a "NME-wide methodology," which includes as "features" the "failure to request information," the "failure to provide rights of defense," and the "recourse to facts available." China's challenge includes Commerce's final determinations, any modification, replacement, or amendment of such final determinations, and "any closely connected, subsequent measures" that involve the application of the "NME-wide methodology."

Finally, with respect to the antidumping measures on aluminum extrusions, coated paper, shrimp, tires, OCTG, solar cells, sawblades, steel cylinders, wood flooring, ribbons, bags, PET film, and furniture, China challenges Commerce's application in investigations and administrative reviews of what China describes as "adverse facts available." China's challenge includes Commerce's final determinations, any modification, replacement, or amendment of such final determinations, and "any closely connected, subsequent measures" that involve the application of the "NME-wide methodology." China also challenges the use of "adverse facts available" "as such," and alleges that it has been consistently applied pursuant to section 776(b) of the Tariff Act of 1930, codified at 19 U.S.C. 1677e(b) and regulations set forth in 19 CFR 351.308.

China alleges inconsistencies with Articles 2.4.2, 6.1, 6.8, 6.10, 9.2, 9.3, 9.4, and Annex II of the AD Agreement and Article VI:2 of the *General Agreement on Tariffs and Trade 1994*.

#### Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to [www.regulations.gov](http://www.regulations.gov) docket number USTR-2014-0001. If you are unable to provide submissions by [www.regulations.gov](http://www.regulations.gov), please contact

Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

To submit comments via [www.regulations.gov](http://www.regulations.gov), enter docket number USTR-2014-0001 on the home page and click "search". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the [www.regulations.gov](http://www.regulations.gov) Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.)

The [www.regulations.gov](http://www.regulations.gov) Web site allows users to provide comments by filling in a "Type Comments" field, or by attaching a document using an "Upload File" field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comments" field.

A person requesting that information contained in a comment that he/she submitted be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395-3640. A non-confidential summary of the confidential information must be submitted to [www.regulations.gov](http://www.regulations.gov). The non-confidential summary will be placed in the docket and will be open to public inspection.

USTR may determine that information or advice contained in a comment submitted, other than business confidential information, is confidential in accordance with Section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to [www.regulations.gov](http://www.regulations.gov). The non-confidential summary will be placed in the docket and will be open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR–2014–0001, accessible to the public at [www.regulations.gov](http://www.regulations.gov). The public file will include non-confidential comments received by USTR from the public regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from such a panel, the following documents will be made available to the public at [www.ustr.gov](http://www.ustr.gov): the United States' submissions, any non-confidential submissions received from other participants in the dispute, and any non-confidential summaries of submissions received from other participants in the dispute.

In the event that a dispute settlement panel is convened, or in the event of an appeal from such a panel, the report of the panel, and, if applicable, the report of the Appellate Body, will also be available on the Web site of the World Trade Organization, at [www.wto.org](http://www.wto.org). Comments open to public inspection may be viewed at [www.regulations.gov](http://www.regulations.gov).

**Juan Millan,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. 2014–01350 Filed 1–23–14; 8:45 am]

**BILLING CODE 3290–F4–P**

## DEPARTMENT OF THE TREASURY

### Proposed Collection; Comment Request; Office of Financial Stability

**AGENCY:** Departmental Office, 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 comment on a revision of an existing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). This clearance will allow the Office of Financial Stability, within the Department of the Treasury, to collect information from homeowners that have received mortgage modifications under the Home Affordable Modification Program (HAMP), in order to study the performance of HAMP modifications.

**DATES:** Written comments should be received on or before February 24, 2014 to be assured of consideration.

**ADDRESSES:** Comments regarding these information collections should be addressed to the Department of the Treasury, Departmental Offices, Office of Financial Stability, ATTN: Jay Warden, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the Department of the Treasury, Departmental Offices, Office of Financial Stability, ATTN: Jay Warden, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**  
*Title:* Study of MHA Program Performance.

*OMB Control Number:* 1505–0249.

*Abstract:* Pursuant to its authority under the Emergency Economic Stabilization Act (EESA) of 2008 (Pub. L. 110–343), the Department of the Treasury established the Making Home Affordable Program (MHA), a voluntary foreclosure prevention program, to help stabilize the housing market. Under MHA, the Department provides financial incentives to servicers, investors and homeowners to facilitate loan modifications and other foreclosure alternatives. MHA includes, among other things, the Home Affordable Modification Program (HAMP). HAMP is designed to reduce each qualifying homeowner's first lien mortgage payments to a more affordable level.

The Department, through its financial agent, plans to conduct a survey of homeowners who have received mortgage modifications under HAMP, in order to study the performance of HAMP modifications. The survey will collect information about reasons for loss of good standing and the homeowner's experience during the HAMP modification process.

*Type of Review:* Revision of a Currently Approved Collection.

*Affected Public:* Individuals, Households.

*Respondent's Obligation:* Voluntary.

The study will likely involve up to 4800 subjects. Each individual data collection session will be approximately 15 to 20 minutes long.

*Estimated Average Time per Respondent:* 15 to 20 minutes per response.

*Estimated Total Annual Burden Hours:* Approximately 1600 burden hours.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether 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.

**Dawn D. Wolfgang,**

*Treasury Department PRA Clearance Officer.*

[FR Doc. 2014–01421 Filed 1–23–14; 8:45 am]

**BILLING CODE 4810–25–P**



# FEDERAL REGISTER

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Part II

## Department of Transportation

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Federal Railroad Administration

49 CFR Part 213

Track Safety Standards; Improving Rail Integrity; Final Rule

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****49 CFR Part 213**

[Docket No. FRA–2011–0058, Notice No. 2]

RIN 2130–AC28

**Track Safety Standards; Improving Rail Integrity**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** FRA is amending the Federal Track Safety Standards to promote the safety of railroad operations by enhancing rail flaw detection processes. In particular, FRA is establishing minimum qualification requirements for rail flaw detection equipment operators, as well as revising requirements for effective rail inspection frequencies, rail flaw remedial actions, and rail inspection records. In addition, FRA is removing regulatory requirements concerning joint bar fracture reporting. This final rule is intended to implement section 403 of the Rail Safety Improvement Act of 2008 (RSIA).

**DATES:** This final rule is effective March 25, 2014. Petitions for reconsideration must be received on or before March 25, 2014. Comments in response to petitions for reconsideration must be received on or before May 9, 2014.

**ADDRESSES:** *Petitions for reconsideration and comments on petitions for reconsideration:* Any petitions for reconsideration or comments on petitions for reconsideration related to this Docket No. FRA–2011–0058, Notice No. 2, may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.Regulations.gov](http://www.Regulations.gov). Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, West Building, Ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* 202–493–2251.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Please note that any petitions for reconsideration or comments received

will be posted without change to [www.Regulations.gov](http://www.Regulations.gov), including any personal information provided. Please see the discussion under the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents, or any petitions for reconsideration or comments received, go to [www.Regulations.gov](http://www.Regulations.gov) at any time or visit the Docket Management Facility, U.S. Department of Transportation, West Building, Ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Carlo Patrick, Staff Director, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6399); or Elisabeth Galotto, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20950 (telephone: 202–493–0270).

**SUPPLEMENTARY INFORMATION:****Table of Contents for Supplementary Information**

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**I. Executive Summary**

Having considered the public comments in response to FRA's October 19, 2012, proposed rule on Track Safety Standards, Improving Rail Integrity, *see* 77 FR 64249, FRA issues this rule amending the Track Safety Standards,

49 CFR Part 213. This final rule contains requirements related to the following subject areas: defective rails, the inspection of rail, qualified operators, and inspection records. The final rule also addresses the mandate of section 403 of the RSIA, and removes the joint bar fracture reporting requirement. The following is a brief overview of the final rule organized by the subject area:

- *Defective Rails*

The final rule provides track owners with a four-hour period in which to verify that certain, suspected defects exists in a rail section. The primary purpose of the four-hour, deferred-verification option is to assist track owners in improving detector car utilization and production, increase the opportunity to detect more serious defects, and help ensure that all rail that the detector car is intended to travel over while in service is inspected. Additionally, the rule revises the remedial action table in areas such as transverse defects, longitudinal weld defects, and crushed head defects.

- *Inspection of Rail*

Formerly, Class 4 and 5 track, as well as Class 3 track over which passenger trains operate, were required to be tested for internal rail defects at least once every accumulation of 40 million gross tons (mgt) or once a year (whichever time was shorter). Class 3 track over which passenger trains do not operate was required to be tested at least once every accumulation of 30 mgt or once per year (whichever time was longer). When these inspection requirements were drafted, track owners were already initiating and implementing the development of a performance-based risk management concept for determination of rail inspection frequency, which is often referred to as the “self-adaptive scheduling method.” Under this method, inspection frequency is established annually based on several factors, including the total detected defect rate per test, the rate of service failures between tests, and the accumulated tonnage between tests. Track owners then utilize this information to generate and maintain a service failure performance target.

This final rule codifies standard industry good practices. The final rule requires track owners to maintain service failure rates of no more than 0.1 service failure per year per mile of track for all Class 4 and 5 track; no more than 0.09 service failure per year per mile of track for all Class 3, 4, and 5 track that carries regularly-scheduled passenger trains or is a hazardous materials route; and no more than 0.08 service failure per year per mile of track for all Class



3, 4, and 5 track that carries regularly-scheduled passenger trains and is a hazardous materials route.

The final rule also requires that internal rail inspections on Class 4 and 5 track, and Class 3 track with regularly-scheduled passenger trains or that is a hazardous materials route, not exceed a time interval of 370 days between inspections or a tonnage interval of 30 mgt between inspections, whichever is shorter. Internal rail inspections on Class 3 track without regularly-scheduled passenger trains and that is not a hazardous materials route must be inspected at least once each calendar year, with no more than 18 months between inspections, or at least once every 30 mgt, whichever interval is longer, but in no case may inspections be more than 5 years apart.

- *Qualified Operators*

The final rule adds a new provision requiring that each provider of rail flaw detection have a documented training program to ensure that a flaw detection equipment operator is qualified to operate each of the various types of equipment utilized in the industry for which he or she is assigned to operate. For a rail flaw detection test to be valid, the test must be performed by a qualified operator. Qualified operators are in turn subject to minimum training, evaluation, and documentation requirements to help ensure the validity of a rail flaw detection test. It is the responsibility of the track owner to reasonably ensure that any provider of rail flaw detection is in compliance with these training and qualification requirements.

- *Removing the Requirement of a Joint Bar Fracture Report*

The final rule removes the requirement that track owners generate a Joint Bar Fracture Report (Fracture Report) for every cracked or broken continuous welded rail (CWR) joint bar that the track owner discovers during the course of an inspection. The reports were providing little, useful research data to prevent future failures of CWR joint bars. Instead, a new study will be conducted to determine what conditions lead to CWR joint bar failures and include a description of the overall condition of the track in the vicinity of the failed joint(s), track geometry (gauge, alignment, profile, cross-level) at the joint location, and the maintenance history at the joint location, along with photographic evidence of the failed joint.

- *Inspection Records*

The final rule ensures that a railroad's rail inspection records include the date of inspection, track identification and milepost for each location tested, type of defect found and size if not removed prior to traffic, and initial remedial action as required by § 213.113. The final rule also requires that when tracks do not receive a valid inspection they are documented in the railroad's rail inspection records.

- *Section 403 of the RSIA*

On October 16, 2008, the RSIA (Pub. L. 110–432, Division A) was enacted. Section 403(a) of the RSIA required the Secretary of Transportation (Secretary) to conduct a study of track issues, known as the Track Inspection Time Study (Study), to determine whether track inspection intervals needed to be amended; whether track remedial action requirements needed to be amended; whether different track inspection and repair priorities and methods were required; and whether the speed of track inspection vehicles should be regulated. As part of the Study, section 403(b) of the RSIA instructed the Secretary to consider “the most current rail flaw, rail defect growth, rail fatigue, and other relevant track- or rail-related research and studies,” as well as new inspection technologies, and National Transportation Safety Board (NTSB) and FRA accident information. The Study was completed and presented to Congress on May 2, 2011. Section 403(c) of the RSIA further provided that FRA prescribe regulations based on the results of the Study two years after its completion.

FRA tasked the Railroad Safety Advisory Committee (RSAC) to address the recommendations of the Study. After several meetings, the Association of American Railroads (AAR) together with the Brotherhood of Maintenance of Way Employees Division (BMWED) proposed that FRA had met its obligations under section 403(c) of the RSIA, specifically through its rulemakings on vehicle/track interaction, concrete crossties, and the proposals contained in the NPRM related to rail integrity. They also stated that no additional action on the RSAC task was necessary and recommended that the task be closed. FRA took AAR's and BMWED's proposal under advisement and conducted its own analysis as to the fulfillment of the mandates under section 403. FRA concluded that these statutory obligations were being fulfilled. Subsequently, the full RSAC concurred that FRA's rulemakings were

sufficiently addressing the statutorily-mandated topics and that no additional work by the RSAC was necessary.

- *Economic Impact*

The bulk of the final rule revises FRA's Track Safety Standards by codifying current industry good practices. In analyzing the economic impacts of the final rule, FRA does not believe that any existing operation will be adversely affected by these changes, nor does FRA believe that the changes will induce any material costs.

Through its regulatory evaluation, FRA explains what the likely benefits for this final rule are and provides a cost-benefit analysis. FRA anticipates that the final rule will enhance the Track Safety Standards by allocating more time to rail inspections, increasing the opportunity to detect more serious defects sooner, providing assurance that qualified operators are inspecting the rail, and causing inspection records to be updated with more useful information. The main benefit associated with this final rule is derived from granting track owners a four-hour window to verify certain defects found in a rail inspection. Without the additional time to verify these defects, track owners must stop their inspections anytime a suspect defect is identified, to avoid civil penalty liability, and then resume their inspections after the defect is verified. The defects subject to the deferred verification allowance are usually considered less likely to cause immediate rail failure, and require less restrictive remedial action. The additional time permits track owners to avoid the cost of paying their internal inspection crews or renting a rail flaw detector car an additional half day, saving the industry \$8,400 per day. FRA believes the value of the anticipated benefits easily justifies the cost of implementing the final rule.

The final rule's total net benefits are estimated to be about \$62.9 million over a 20-year period. The benefits are approximately \$48.1 million, discounted at a 3-percent rate, or about \$35.5 million, discounted at a 7-percent rate. In the final rule, the estimated benefit showed an overall increase of 2.6% compared to the estimates provided in the NPRM. Part of this increase is due to the application of the Congressional Budget Office (CBO) real wage forecast which adjusts the annual growth rate by 1.07 percent annually. FRA also determined that the implementation year would be 2014; therefore, all wages were adjusted accordingly. The change in the implementation year accounts for the remainder of the increased benefits.

FRA believes that such improvements will more than likely result from the implementation of the final rule by the railroad industry.

## II. Rail Integrity Overview

### A. Derailment in 2001 Near Nodaway, Iowa

On March 17, 2001, the *California Zephyr*, a National Railroad Passenger Corporation (Amtrak) passenger train carrying 257 passengers and crew members, derailed near Nodaway, Iowa. According to the NTSB, the train's sixteen cars decoupled from its two locomotives and eleven cars went off the rails. Seventy-eight people were injured and one person died from the accident. See NTSB/RAB-02-01.

The NTSB discovered a broken rail at the point of derailment. The broken pieces of rail were reassembled at the scene, and it was determined that they came from a 15½-foot section of rail that had been installed as replacement rail, or "plug rail," at this location in February 2001. The replacement had been made because, during a routine scan of the existing rail on February 13, 2001, the Burlington Northern and Santa Fe Railway (now BNSF Railway Company or BNSF) discovered internal defects that could possibly hinder the rail's effectiveness. A short section of the continuous welded rail that contained the defects was removed, and a piece of replacement rail was inserted. However, the plug rail did not receive an ultrasonic inspection before or after installation.

During the course of the accident investigation, the NTSB could not reliably determine the source of the plug rail. While differing accounts were given concerning the origin of the rail prior to its installation in the track, the replacement rail would most likely have been rail which was removed from another track location for reuse. Analysis of the rail found that the rail failed due to fatigue initiating from cracks associated with the precipitation of internal hydrogen. If the rail had been ultrasonically inspected prior to its reuse, it is likely that the defects could have been identified and that section of rail might not have been used as plug rail.

As a result of its investigation of the Nodaway, Iowa, railroad accident, the NTSB recommended that FRA require railroads to conduct ultrasonic or other appropriate inspections to ensure that rail used to replace defective segments of existing rail is free from internal defects. See NTSB Recommendation R-02-5.

### B. Derailment in 2006 Near New Brighton, Pennsylvania

On October 20, 2006, Norfolk Southern Railway Company (NS) train 68QB119 derailed while crossing the Beaver River railroad bridge in New Brighton, Pennsylvania. The train was pulling eighty-three tank cars loaded with denatured ethanol, a flammable liquid. Twenty-three of the tank cars derailed near the east end of the bridge, causing several of the cars to fall into the Beaver River. Twenty of the derailed cars released their loads of ethanol, which subsequently ignited and burned for forty-eight hours. Some of the unburned ethanol liquid was released into the river and the surrounding soil. Homes and businesses within a seven-block area of New Brighton and in an area adjacent to the accident had to be evacuated for days. While no injuries or fatalities resulted from the accident, NS estimated economic and environmental damages to be \$5.8 million. See NTSB/RAB-08-9 through -12. The NTSB determined that the probable cause of the derailment was an undetected internal rail defect identified to be a detail fracture. The NTSB also noted that insufficient regulation regarding internal rail inspection may have contributed to the accident.

This accident demonstrated the potential for rail failure with subsequent derailment if a railroad's internal rail defect detection process fails to detect an internal rail flaw. This accident also indicated a need for adequate requirements that will ensure rail inspection and maintenance programs identify and remove rail with internal defects before they reach critical size and result in catastrophic rail failures.

### C. Office of Inspector General Report: *Enhancing the Federal Railroad Administration's Oversight of Track Safety Inspections*

On February 24, 2009, the DOT's Office of Inspector General (OIG) issued a report presenting the results of its audit of FRA's oversight of track-related safety issues, and making two findings. First, the OIG found that FRA's safety regulations for internal rail flaw testing did not require the railroads to report the specific track locations, such as milepost numbers or track miles that were tested during these types of inspections. Second, the OIG found that FRA's inspection data systems did not provide adequate information for determining the extent to which FRA's track inspectors have reviewed the railroads' records for internal rail flaw testing and visual track inspections to assess compliance with safety

regulations. The OIG recommended that FRA revise its track safety regulations for internal rail flaw testing to require railroads to report track locations covered during internal rail flaw testing, and that FRA develop specific inspection activity codes for FRA inspectors to use to report on whether the record reviews FRA inspectors conduct were for internal rail flaw testing or visual track inspections. *Enhancing the Federal Railroad Administration's Oversight of Track Safety Inspections*, Department of Transportation, Office of Inspector General, CR-2009-038, February 24, 2009. This report is available on the OIG's public Web site at: [http://www.oig.dot.gov/sites/dot/files/pdfdocs/Signed\\_Final\\_Track\\_Safety\\_Report\\_02-24-09.pdf](http://www.oig.dot.gov/sites/dot/files/pdfdocs/Signed_Final_Track_Safety_Report_02-24-09.pdf).

### D. General Factual Background on Rail Integrity<sup>1</sup>

The single most important material asset to the railroad industry is its rail infrastructure, and historically the primary concern of railroad companies has been the probability of rail flaw development, broken rails, and subsequent derailments. This has resulted in railroads improving their rail maintenance practices, purchasing more wear-resistant rail, improving flaw-detection technologies, and increasing rail inspection frequencies in an effort to prevent rail defect development. The direct cost of an undetected rail failure is the difference between the cost of replacing the rail failure on an emergency basis, and the cost of the organized replacement of detected defects. However, a rail defect that goes undetected and results in a train derailment can cause considerable, additional costs such as excessive service interruption, extensive traffic rerouting, environmental damage, and even potential injury and death.

To maximize the service life of rail, railroads must accept a certain rate of defect development. This results in railroads relying on regular rail inspection cycles, and strategically renewing rail that is showing obvious evidence of fatigue. The development of internal rail defects is an inevitable consequence of the accumulation and effects of fatigue under repeated loading. The challenge for the railroad

<sup>1</sup> This section is primarily based on information from two sources: *Progress in Rail Integrity Research*, DOT/FRA/ORD-01/18, D.Y. Jeong, 2001; and I. H. H. A. *Guidelines to Best Practices for Heavy Haul Railway Operations; Infrastructure Construction and Maintenance Issues, Section 4.3.1 Rail Defect Detection and Technologies*, Carlo M. Patrick, R. Mark Havira, Gregory A. Garcia, Library of Congress Control No. 2009926418, 2009.

industry is to avoid the occurrence of rail service failure due to the presence of an undetected defect. Rail service failures are expensive to repair and can lead to costly service disruptions and possibly derailments.

The effectiveness of a rail inspection program depends on the test equipment being properly designed and capable of reliably detecting rail defects of a certain size and orientation, while also ensuring that the test frequencies correspond to the growth rate of critical defects. The objective of a rail inspection program is to reduce the annual costs and consequences resulting from broken rails, which involve several variables.

The predominant factor that determines the risk of rail failure is the rate of development of internal flaws. Internal rail flaws have a period of origin and a period often referred to as slow crack growth life. The risk is introduced when internal flaws remain undetected during their growth to a critical size. This occurs when the period in which the crack develops to a detectable size is significantly shorter than the required test interval.

In practice, the growth rate of rail defects is considered highly inconsistent and unpredictable. Rail flaw detection in conjunction with railroad operations often presents some specific problems. This is a result of high traffic volumes that load the rail and accelerate defect growth, while at the same time decreasing the time available for rail inspection. Excessive wheel loading can result in stresses to the rail that can increase defect growth rates. Consequently, heavy axle loading can lead to rail surface fatigue that may prevent detection of an underlying rail flaw by the test equipment. Most railroads attempt to control risk by monitoring test reliability through an evaluation process of fatigue service failures that occur soon after testing, and by comparing the ratio of service failures or broken rails to detected rail defects.

The tonnage required to influence defect development is also considered difficult to predict; however, once initiated, transverse defect development is influenced by tonnage. Rapid defect growth rates can also be associated with rail where high-tensile residual stresses are present in the railhead and in CWR in lower temperature ranges where the rail is in high longitudinal tension.

It is common for railroads to control risk by monitoring the occurrence of both detected and service defects. For railroads in the U.S., risk is typically evaluated to warrant adjustment of test frequencies. The railroads attempt to

control the potential of service failure by testing more frequently.

In conducting rail integrity research, the general approach is to focus on confirming whether rail defects can be detected by periodic inspection before they grow large enough to cause a rail failure. In the context of rails, damage tolerance is the capability of the rail to resist failure and continue to perform safely with damage (i.e., rail defects). This implies that a rail containing a crack or defect is weaker than a normal rail, and that the rail's strength decreases as the defect grows. As growth continues, the applied stresses will eventually exceed the rail's strength and cause a failure. Such information can be used to establish guidelines for determining the appropriate frequency of rail inspections to mitigate the risk of rail failure from undetected defects.

Current detection methods that are performed in the railroad industry utilize various types of processes with human involvement in the interpretation of the test data. These include the:

- Portable test process, which consists of an operator pushing a test device over the rail at a walking pace while visually interpreting the test data;
- Start/stop process, where a vehicle-based, rail flaw detection system tests at a slow speed (normally not exceeding 20 mph) gathering data that is presented to the operator on a test monitor for interpretation;
- Chase car process, which consists of a lead test vehicle performing the flaw detection process in advance of a verification chase car; and
- Continuous test process, which consists of operating a high-speed, vehicle-based test system non-stop along a designated route, analyzing the test data at a centralized location, and subsequently verifying suspect defect locations.

The main technologies utilized for non-destructive testing on U.S. railroads are the ultrasonic and induction methods. Ultrasonic technology is the primary technology used, and induction technology is currently used as a complementary system. As with any non-destructive test method, these technologies are susceptible to physical limitations that allow poor rail head surface conditions to negatively influence the detection of rail flaws. The predominant types of these poor, rail head surface conditions are shells, engine driver burns, spalling, flaking, corrugation, and head checking. Other conditions that are encountered include heavy lubrication or debris on the rail head.

Induction testing requires the introduction of a high-level, direct current into the top of the rail and establishing a magnetic field around the rail head. An induction sensor unit is then passed through the magnetic field. The presence of a rail flaw will result in a distortion of the current flow, and it is this distortion of the magnetic field that is detected by the search unit.

Ultrasonics can be briefly described as sound waves, or vibrations, that propagate at a frequency that is above the range of human hearing, normally above a range of 20,000 Hz or cycles per second. The range normally utilized during current flaw detection operations is 2.25 MHz (million cycles per second) to 5.0 MHz. Ultrasonic waves are generated into the rail by piezo-electric transducers that can be placed at various angles with respect to the rail surface. The ultrasonic waves produced by these transducers normally scan the entire rail head and web, as well as the portion of the base directly beneath the web. Internal rail defects represent a discontinuity in the steel material that constitutes the rail. This discontinuity acts as a reflector to the ultrasonic waves, resulting in a portion of the wave being reflected back to the respective transducer. These conditions include rail head surface conditions, internal or visible rail flaws, weld upset/finish, and known reflectors within the rail geometry such as drillings or rail ends. The information is then processed by the test system and recorded in the permanent test data record. Interpretation of the reflected signal is the responsibility of the test system operator.

Railroads have always inspected track visually to detect rail failures, and have been using crack-detection devices in rail-test vehicles since the 1930s. Meanwhile, the railroad industry has trended towards increased traffic density and average axle loads. Current rail integrity research recognizes and addresses the need to review and update rail inspection strategies and preventive measures. This includes the frequency interval of rail inspection, remedial action for identified rail defects, and improvements to the performance of the detection process.

FRA has sponsored railroad safety research for several decades. One part of this research program is focused on rail integrity. The general objectives of FRA rail integrity research have been to improve railroad safety by reducing rail failures and the associated risks of train derailment, and to do so more efficiently through new maintenance practices that increase rail service life. The studies sponsored by FRA focus on

analysis of rail defects; residual stresses in rail; strategies for rail testing; and other areas related to rail integrity, which include advances in nondestructive inspection techniques and feasibility of advanced materials for rail, rail lubrication, rail grinding, and wear. Moreover, rail integrity research is an ongoing effort, and will continue as annual tonnages and average axle loads increase on the nation's railroads.

Due to the limitations of current technology to detect internal rail flaws beneath surface conditions and in the base flange area, FRA's research has been focusing on other rail flaw detection technologies. One laser-based, ultrasonic rail defect detection prototype, which is being developed by the University of California-San Diego under an FRA Office of Research and Development grant, has produced encouraging results in ongoing field testing. The project goal is to develop a rail defect detection system that provides better defect detection reliability at a higher inspection speed than is currently achievable. The primary target is the detection of transverse defects in the rail head. The method is based on ultrasonic guided waves, which can travel below surface discontinuities, hence minimizing the masking effect of transverse cracks by surface shelling. The inspection speed can also be improved greatly because guided waves run long distances before attenuating.

Non-destructive test systems perform optimally on perfect test specimens. However, rail in track is affected by repeated wheel loading that results in the plastic deformation of the rail running surface, which can create undesirable surface conditions as described previously. These conditions can influence the development of rail flaws. These conditions can also affect the technologies currently utilized for flaw detection by limiting their detection capabilities. Therefore, it is important that emerging technology development continue, in an effort to alleviate the impact of adverse rail surface conditions.

#### *E. Statutory Mandate To Conduct This Rulemaking*

The first Federal Track Safety Standards (Standards) were published on October 20, 1971, following the enactment of the Federal Railroad Safety Act of 1970, Public Law 91-458, 84 Stat. 971 (October 16, 1970), in which Congress granted to the Secretary comprehensive authority over "all areas of railroad safety." See 36 FR 20336. FRA envisioned the new Standards to be an evolving set of safety requirements

subject to continuous revision allowing the regulations to keep pace with industry innovations and agency research and development. The most comprehensive revision of the Standards resulted from the Rail Safety Enforcement and Review Act of 1992, Public Law 102-365, 106 Stat. 972 (Sept. 3, 1992), later amended by the Federal Railroad Safety Authorization Act of 1994, Public Law 103-440, 108 Stat. 4615 (Nov. 2, 1994). The amended statute is codified at 49 U.S.C. 20142 and required the Secretary to review and then revise the Standards, which are contained in 49 CFR part 213. The Secretary has delegated such statutory responsibilities to the Administrator of FRA. See 49 CFR 1.89. FRA carried out this review on behalf of the Secretary, which resulted in FRA issuing a final rule amending the Standards in 1998. See 63 FR 34029, June 22, 1998; 63 FR 54078, Oct. 8, 1998.

Pursuant to 49 U.S.C. 20103, the Secretary may prescribe regulations as necessary in any area of railroad safety. As described in the next section, FRA began its examination of rail integrity issues through RSAC on October 27, 2007. Then, on October 16, 2008, the RSIA was enacted. As previously noted, section 403(a) of the RSIA required the Secretary to conduct a study of track issues. In doing so, section 403(b) of the RSIA required the Secretary to consider "the most current rail flaw, rail defect growth, rail fatigue, and other relevant track- or rail-related research and studies." The Study was completed and submitted to Congress on May 2, 2011. Section 403(c) of the RSIA also required the Secretary to promulgate regulations based on the results of the Study. As delegated by the Secretary, see 49 CFR 1.89, FRA utilized its advisory committee, RSAC, to help develop the information necessary to fulfill the RSIA's mandates in this area.

FRA notes that section 403 of the RSIA contains one additional mandate, which FRA has already fulfilled, promulgating regulations for concrete crossties. On April 1, 2011, FRA published a final rule on concrete crosstie regulations per this mandate in section 403(d). That final rule specifies requirements for effective concrete crossties, for rail fastening systems connected to concrete crossties, and for automated inspections of track constructed with concrete crossties. See 76 FR 18073. FRA received two petitions for reconsideration in response to that final rule, and responded to them by final rule published on September 9, 2011. See 76 FR 55819.

### **III. Overview of FRA's Railroad Safety Advisory Committee (RSAC)**

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to the Administrator of FRA on rulemakings and other safety program issues. RSAC includes representation from all of the agency's major stakeholders, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. An alphabetical list of RSAC members follows:

AAR;  
American Association of Private Railroad Car Owners;  
American Association of State Highway and Transportation Officials (AASHTO);  
American Chemistry Council;  
American Petrochemical Institute;  
American Public Transportation Association (APTA);  
American Short Line and Regional Railroad Association (ASLRRA);  
American Train Dispatchers Association;  
Amtrak;  
Association of Railway Museums (ARM);  
Association of State Rail Safety Managers (ASRSM);  
BMWED;  
Brotherhood of Locomotive Engineers and Trainmen (BLET);  
Brotherhood of Railroad Signalmen (BRS);  
Chlorine Institute;  
Federal Transit Administration;\*  
Fertilizer Institute;  
High Speed Ground Transportation Association;  
Institute of Makers of Explosives;  
International Association of Machinists and Aerospace Workers;  
International Brotherhood of Electrical Workers;  
Labor Council for Latin American Advancement;\*  
League of Railway Industry Women;\*  
National Association of Railroad Passengers;  
National Association of Railway Business Women;\*  
National Conference of Firemen & Oilers;  
National Railroad Construction and Maintenance Association;  
NTSB;\*  
Railway Supply Institute;  
Safe Travel America;  
Secretaria de Comunicaciones y Transporte;\*  
Sheet Metal Workers International Association;  
Tourist Railway Association Inc. (TRAIN);  
Transport Canada;\*  
Transport Workers Union of America;  
Transportation Communications International Union/BRC;  
Transportation Security Administration; and  
United Transportation Union (UTU).

*\*Indicates associate, non-voting membership.*

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that

possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration.

If a working group comes to a unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to the Administrator of FRA. FRA then determines what action to take on the recommendation. Because FRA staff members play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation.

However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether a recommended rule achieves the agency's regulatory goals, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. However, to the maximum extent practicable, FRA utilizes RSAC to provide consensus recommendations with respect to both proposed and final agency action. If RSAC is unable to reach consensus on a recommendation for action, the task is withdrawn and FRA determines the best course of action.

#### IV. RSAC Track Safety Standards Working Group

The Track Safety Standards Working Group (Working Group) was formed on February 22, 2006. On October 27, 2007, the Working Group formed two subcommittees: the Rail Integrity Task Force (RITF) and the Concrete Crosstie Task Force. Principally in response to NTSB recommendation R-02-05,<sup>2</sup> the RITF was tasked to review the controls applied to the reuse of plug rail and

ensure a common understanding within the regulated community concerning requirements for internal rail flaw inspections.

However, after the New Brighton accident, and in response to NTSB recommendations R-08-9, R-08-10, and R-08-11,<sup>3</sup> the RITF was given a second task on September 10, 2008, which directed the group to do the following: (1) Evaluate factors that can and should be included in determining the frequency of internal rail flaw testing and develop a methodology for taking those factors into consideration with respect to mandatory testing intervals; (2) determine whether and how the quality and consistency of internal rail flaw testing can be improved; (3) determine whether adjustments to current remedial action criteria are warranted; and (4) evaluate the effect of rail head wear, surface conditions and other relevant factors on the acquisition and interpretation of internal rail flaw test results.

The RITF met on November 28–29, 2007; February 13–14, 2008; April 15–16, 2008; July 8–9, 2008; September 16–17, 2008; February 3–4, 2009; June 16–17, 2009; October 29–30, 2009; January 20–21, 2010; March 9–11, 2010; and April 20, 2010. The RITF's findings were reported to the Working Group for approval on July 28–30, 2010. The Working Group reached a consensus on the majority of the RITF's work and forwarded proposals to the full RSAC on September 23, 2010 and December 14, 2010. The RSAC voted to approve the Working Group's recommended text, which provided the basis for the NPRM in this proceeding and ultimately this final rule.

In addition to FRA staff, the members of the Working Group include the following:

- AAR, including the Transportation Technology Center, Inc., and members

from BNSF, Canadian National Railway (CN), Canadian Pacific Railway (CP), CSX Transportation, Inc. (CSX), The Kansas City Southern Railway Company (KCS), NS, and Union Pacific Railroad Company (UP);

- Amtrak;
- APTA, including members from Northeast Illinois Regional Commuter Railroad Corporation (Metra), Long Island Rail Road (LIRR), and Southeastern Pennsylvania Transportation Authority (SEPTA);
- ASLRRA (representing short line and regional railroads);
- BLET;
- BMWED;
- BRS;
- John A. Volpe National Transportation Systems Center (Volpe Center)
- NTSB; and
- UTU.

#### V. Development of the NPRM and Final Rule

##### A. Development of the NPRM

Through RSAC discussions, the Working Group determined that it would focus its efforts on rail inspection processes. FRA regulations were reviewed during the meetings, and areas were identified that were potentially inconsistent or out of date with rail inspection practice that was considered standard in the industry. This included rail defect nomenclature, inspection frequencies, operator training, and rail inspection records. The group reached consensus on the necessary changes. These changes were presented to RSAC for approval, and these recommendations provided the basis for the NPRM.

FRA worked closely with RSAC in developing these recommendations. FRA believes that RSAC effectively addressed rail inspection safety issues regarding the frequency of inspection, rail defects, remedial action, and operator qualification. FRA greatly benefited from the open, informed exchange of information during the RITF meetings. The NPRM was developed based on a general consensus among railroads, rail labor organizations, State safety managers, and FRA concerning rail safety. FRA believes that the expertise possessed by RSAC representatives enhanced the value of the recommendations, and FRA made every effort to incorporate them into the NPRM, which was published on October 19, 2012. See 77 FR 64249.

Nevertheless, the Working Group was unable to reach consensus on one item that FRA elected to include in the NPRM, and subsequently in this final

<sup>2</sup> After the Nodaway accident, the NTSB recommended that FRA "[r]equire railroads to conduct ultrasonic or other appropriate inspections to ensure that rail used to replace defective segments of existing rail is free from internal defects." NTSB Safety Recommendation R-02-5, dated March 5, 2002.

<sup>3</sup> After the New Brighton accident, the NTSB issued three additional safety recommendations dated May 22, 2008: (1) FRA should "[r]eview all railroads' internal rail defect detection and require changes to those procedures as necessary to eliminate exception to the requirement for an uninterrupted, continuous search for rail defects." R-08-9; (2) FRA should "[r]equire railroads to develop rail inspection and maintenance programs based on damage-tolerance principles, and approve those programs. Include in the requirement that railroads demonstrate how their programs will identify and remove internal defects before they reach critical size and result in catastrophic rail failures. Each program should take into account, at a minimum, accumulated tonnage, track geometry, rail surface conditions, rail head wear, rail steel specifications, track support, residual stresses in the rail, rail defect growth rates, and temperature differentials." R-08-10; and (3) FRA should "[r]equire that railroads use methods that accurately measure rail head wear to ensure that deformation of the head does not affect the accuracy of the measurements." R-08-11.

rule. The Working Group could not reach consensus on the definition of "rail inspection segment" length, which is utilized in the new performance-based test frequency determination in § 213.237, "Inspection of rail." A discussion of this issue is detailed below.

#### *B. Development of the Final Rule*

FRA notified the public of its options to submit written comments on the NPRM and to request an oral hearing on the NPRM as well. No request for a public hearing was received; however, some interested parties submitted written comments to the docket in this proceeding, and FRA considered all of these comments in preparing the final rule. FRA received a total of eleven comments on the NPRM, including comments from RSAC or Working Group members AAR, NTSB, BMWED, ARM, TRAIN, and UP, as well as comments from two private individuals.

On April 16, 2013, the RITF reconvened through a conference call to discuss all public comments received on the NPRM and help achieve consensus on the recommendations concerning their incorporation into this final rule. FRA had reviewed and analyzed each issue mentioned in the comments, and during the call, FRA presented the comments and any proposed changes to the NPRM. The RITF expressed few concerns about FRA's approach to address the comments received, and decided it did not need to take a formal vote on the proposed changes.

Having considered the public comments, and finding that the RSAC's recommendations help fulfill the agency's regulatory goals, are soundly supported, and are in accord with policy and legal requirements, FRA issues this final rule. Each of the comments FRA received is addressed below in the specific section of the final rule to which it applies.

FRA notes that throughout the preamble discussion of this final rule, FRA refers to comments, views, suggestions, or recommendations made by members of the RITF or full RSAC, or comments made by the public, as they are contained in meeting minutes or other materials in the public docket. FRA does so to show the origin of certain issues and the nature of discussions during the development of the final rule. FRA believes that this serves to illuminate factors it has considered in making its regulatory decisions, as well as the rationale for those decisions.

#### **VI. Track Inspection Time Study**

As noted previously, section 403(a) of the RSIA required the Secretary to conduct a study of track issues to determine whether track inspection intervals needed to be amended; whether track remedial action requirements needed to be amended; whether different track inspection and repair priorities and methods were required; and whether the speed of track inspection vehicles should be more specifically regulated. In conducting the Study, section 403(b) of the RSIA instructed the Secretary to consider "the most current rail flaw, rail defect growth, rail fatigue, and other relevant track- or rail-related research and studies," as well as new inspection technologies, and NTSB and FRA accident information. The Study was completed and presented to Congress on May 2, 2011. Section 403(c) of the RSIA further provided that FRA prescribe regulations based on the results of the Study two years after its completion.

On August 16, 2011, RSAC accepted Task 11-02, which was generated in response to the RSIA and to address the recommendations of the Study. Specifically, the purpose of the task was "[t]o consider specific improvements to the Track Safety Standards or other responsive actions to the Track Inspection Time Study required by [section] 403 (a) through (c) of the RSIA and other relevant studies and resources." The first meeting of the Working Group assigned to the task occurred on October 20, 2011, and a second meeting was held on December 20, 2011. At the third meeting on February 7-8, 2012, the AAR together with the BMWED stated that FRA had met its obligations under section 403(c) of the RSIA through its rulemakings on vehicle/track interaction, concrete cross-ties, and the proposals made in this rulemaking on rail integrity. They also suggested that additional action on RSAC Task 11-02 was unnecessary and recommended that the task should be closed. FRA took the proposal under advisement after the February meeting and conducted its own analysis as to the fulfillment of the mandates under section 403. FRA concluded that these statutory obligations were being fulfilled and on April 13, 2012, the Working Group approved a proposal to conclude RSAC Task 11-02. On April 26, 2012, the full RSAC approved the proposal and closed RSAC Task 11-02. The recommendation approved by the full RSAC is described below.

In determining whether regulations were necessary based on the results of the Study, RSAC examined the Study's

four issues for improving the track inspection process:

- Expanding the use of automated inspections;
- Developing additional training requirements for track inspectors;
- Considering a maximum inspection speed for track inspection vehicles; and
- Influencing safety culture through a safety reporting system.

The Study's first recommendation was that FRA consider expanding the use of automated inspections to improve inspection effectiveness. Specifically, the Study cited two specific track defects that are more difficult to detect through visual track inspection and could benefit from the use of automated inspection: rail seat abrasion (RSA) and torch cut bolt holes. Through discussion among the affected parties, it was determined that these areas of concern already had been covered under previous rulemaking and regulations. The Concrete Crossties final rule published on April 1, 2011, contained a new § 213.234, "Automated inspection of track constructed with concrete cross-ties," which specifically employs the use of automated inspection "to measure for rail seat deterioration." In addition, torch cut bolt holes have been prohibited on track Classes 2 and above since 1999, as codified in §§ 213.121(g) and 213.351(f), and they are easily identifiable through the rail flaw detection technology currently in use. Thus, the RSAC concluded that additional regulations to find such defects would be unnecessary.

Outside of these two specific defects, the RSAC concluded that the instant rulemaking on rail integrity would also revise automated inspection standards in other areas, such as ultrasonic testing. For example, this rulemaking changes the ultrasonic testing of rail from a standard based on time and tonnage to one based on self-adaptive performance goals. Thus, the full RSAC concluded that the use of automated inspection has been sufficiently expanded in the areas that currently are most ideally suited for development. While FRA and RSAC noted that they may wish to make changes to the automated inspection standards in the future, FRA and RSAC nevertheless maintained that the changes stated above sufficiently satisfy the RSIA's mandate.

However, RSAC concurred with FRA, BMWED and AAR that it was important to ensure that any type of report generated from the automated inspection of track, regardless of whether it is mandated by regulation or voluntarily utilized by a railroad, be made available to track inspectors. Therefore, in this final rule, FRA is

issuing policy guidance to encourage track owners and railroads to provide the information from their automated track inspections in a usable format to those persons designated as fully qualified under the Track Safety Standards and assigned to inspect or repair the track over which an automated inspection is made. This guidance is as follows:

When automated track inspection methods are used by the track owner, FRA recommends that the information from that inspection be provided or made readily available to those persons designated as fully qualified under 49 CFR 213.7 and assigned to inspect or repair the track over which the automated inspection was made.

Next, the Study addressed whether FRA should develop additional training requirements for track inspectors. RSAC found that it was unnecessary to generate additional training standards under RSAC Task 11–02 for two reasons. First, the instant rulemaking would create a new § 213.238 to address an area of training that requires new standards. Section 213.238 defines a qualified operator of rail flaw detection equipment and requires that each provider of rail flaw detection service have a documented training program to ensure that a rail flaw detection equipment operator is qualified to operate each of the various types of equipment for which he or she is assigned, and that proper training is provided in the use of newly-developed technologies. Second, the NPRM on Training, Qualification, and Oversight for Safety-Related Railroad Employees, 77 FR 6412 (proposed Feb. 7, 2012) (to be codified at 49 CFR parts 214, 232, and 243), would require that employers develop and submit for FRA review a program detailing how they will train their track inspectors, among other personnel. As proposed in the NPRM, employees charged with the inspection of track or railroad equipment are considered safety-related railroad employees that each employer must train and qualify. The proposed formal training for employees responsible for inspecting track and railroad equipment is expected to cover all aspects of their duties related to complying with the Federal standards. FRA would expect that the training programs and courses for such employees would include techniques for identifying defective conditions and would address what sort of immediate remedial actions need to be initiated to correct critical safety defects that are known to contribute to derailments, accidents, incidents, or injuries. *Id.*, at 6415. The RSAC found that new requirements for the training of track inspectors were being adequately

addressed by this proposed rule on employee training standards, and thus did not believe additional action was currently necessary in this area.

Third, the Study addressed whether track hi-rail inspection speed should be specified. The Study concluded that specifying limits to hi-rail inspection speeds could be “counterproductive.” With the currently-available data in this area, the RSAC concurred with the Study’s recommendation and determined that no further action needed to be taken in this area at this time. The RSAC found that the existing reliance on the “inspector’s discretion” as noted in § 213.233, should generally govern track inspection speed. This point will be emphasized in the next publication of FRA’s Track Safety Standards Compliance Manual. FRA also makes clear that, in accordance with § 213.233, if a vehicle is used for visual inspection, the speed of the vehicle may not be more than 5 m.p.h. when passing over track crossings and turnouts.

Finally, the Study addressed ways to enhance the track safety culture of railroads through programs such as a safety reporting system, like the Confidential Close Call Reporting System piloted by FRA. The RSAC was aware that the Risk Reduction Working Group was in the process of developing recommendations for railroads to develop risk reduction programs, which should incorporate many safety concerns in this area. Therefore, the RSAC concluded that additional, overlapping discussion was unnecessary given the specific, concurrent focus of the Risk Reduction Working Group.

FRA notes that, in addition to addressing the Study’s recommendations, RSAC Task 11–02 also incorporated other goals Congress had for the Study, which are described in section 403(a) of the RSIA, such as reviewing track inspection intervals and remedial action requirements, as well as track inspection and repair priorities. The RSAC concluded that FRA’s recent and ongoing rulemakings are sufficiently addressing these areas and that no additional work is currently necessary. Specifically, the instant rulemaking on rail integrity is intended to amend inspection intervals to reflect a new performance-based inspection program, revise the remedial action table for rail, and alter inspection and repair priorities involving internal rail testing and defects such as a crushed head and defective weld. The Concrete Crossties final rule also established new inspection methods and intervals requiring automated inspection, as well as new remedial actions for exceptions

that can be field-verified within 48 hours. Finally, in addition to other requirements, the Vehicle/Track Interaction Safety Standards (VTI) rulemaking, Vehicle/Track Interaction Safety Standards; High-Speed and High Cant Deficiency Operations, 78 FR 16052 (March 13, 2013) (codified at 49 CFR parts 213 and 238), addresses track geometry, inspection, and VTI safety requirements for high speed operations and operations at high cant deficiency over any track class. Overall, FRA believes that the recent and ongoing work of the RSAC and FRA, including recent and ongoing rulemakings, sufficiently address the statutorily-mandated topics in section 403 of the RSIA.

Nonetheless, as part of its comments submitted to the docket on the NPRM, NTSB included comments on the Study and RSAC resolution of Task 11–02. NTSB voiced concern regarding the ability of track inspectors to detect hazards when they inspect multiple tracks from a hi-rail inspection vehicle. While this issue was not specifically addressed by the Study or RSAC, FRA’s Office of Research and Development is formulating a study to look at the effectiveness of different inspection methodologies, including hi-rail inspection, for detecting various types of defects. Knowing the effectiveness of each system will allow for the development of optimal inspection methodologies and optimal inspection frequencies.

NTSB’s comments also suggested “that a combination of visual and automated track inspections should be required for use not just in track with concrete ties but in all high-tonnage routes, passenger train routes, and hazardous materials routes.” While FRA recognizes the important role automated track inspections play in defect detection, FRA concurs with the recommendation of the full RSAC that the current level of required automated inspections is satisfactory at this time.

## VII. Section-By-Section Analysis

### Section 213.3 Application

FRA modifies paragraph (b) of this section to clarify the exclusion of track located inside a plant railroad’s property from the application of this part. In this paragraph, “plant railroad” means a type of operation that has traditionally been excluded from the application of FRA regulations because it is not part of the general railroad system of transportation (general system). In the past, FRA has not defined the term “plant railroad” in other regulations that it has issued



because FRA assumed that its jurisdictional Policy Statement under the *Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, The Extent and Exercise of FRA's Safety Jurisdiction*, 49 CFR part 209, Appendix A (FRA's Policy Statement), provided sufficient clarification as to the definition of that term. However, it has come to FRA's attention that certain rail operations believed that they met the characteristics of a plant railroad, as set forth in the Policy Statement, when, in fact, their rail operations were part of the general railroad system of transportation (general system) and therefore did not meet the definition of a plant railroad. FRA seeks to avoid any confusion as to what types of rail operations qualify as plant railroads and also to save interested persons the time and effort needed to cross-reference and review FRA's Policy Statement to determine whether a certain operation qualifies as a plant railroad.

Consequently, FRA defines the term "plant railroad" in this final rule.

The definition clarifies that when an entity operates a locomotive to move rail cars in service for other entities, rather than solely for its own purposes or industrial processes, the services become public in nature. Such public services represent the interchange of goods, which characterizes operation on the general system. As a result, even if a plant railroad moves rail cars for entities other than itself solely on its property, the rail operations will likely be subject to FRA's safety jurisdiction because those rail operations bring plant track into the general system.

The definition of the term "plant railroad" is consistent with FRA's longstanding policy that it will exercise its safety jurisdiction over a rail operation that moves rail cars for entities other than itself because those movements bring the track over which the entity is operating into the general system. See 49 CFR part 209, Appendix A. FRA's Policy Statement provides that "operations by the plant railroad indicating it [i]s moving cars on . . . trackage for other than its own purposes (e.g., moving cars to neighboring industries for hire)" brings plant track into the general system and thereby subjects it to FRA's safety jurisdiction. *Id.* Additionally, this interpretation of the term "plant railroad" has been upheld in litigation before the U.S. Court of Appeals for the Fifth Circuit. See *Port of Shreveport-Bossier v. Federal Railroad Administration*, No. 10–60324 (5th Cir. 2011) (unpublished per curiam opinion).

FRA also makes clear that FRA's Policy Statement addresses circumstances where railroads that are part of the general system may have occasion to enter a plant railroad's property (e.g., a major railroad goes into a chemical or auto plant to pick up or set out cars) and operate over its track. As explained in the Policy Statement, the plant railroad itself does not get swept into the general system by virtue of the other railroad's activity, except to the extent it is liable, as the track owner, for the condition of its track over which the other railroad operates during its incursion into the plant. Accordingly, the rule makes clear that the track over which a general system railroad operates is not excluded from the application of this part, even if the track is located within the confines of a plant railroad.

During the comment period on the NPRM, FRA received a joint comment from ARM and TRAIN that claimed that part 213 had not been applied to non-general system tourist railroads in the past, and that in past rulemakings, FRA had expressly explained that the exclusory language—"located inside an installation which is not part of the general railroad system of transportation"—included non-general system tourist railroads. By way of example, the joint comments referred to the conductor certification rulemaking (49 CFR part 242), which included a standard "installation" exclusion that expressly provided that part 242 does not apply to non-general system tourist railroads.

Additionally, the joint comments stated that proposed § 213.3(b)(2) focused on plant railroads, especially as that subsection specifically defined the term "plant railroad." ARM and TRAIN concluded that the proposed revision to the applicability section effectively makes the "installation" exclusion applicable only to plant railroads and they sought clarification from FRA on that point. Moreover, if that exclusion were to be limited to "plant railroads," they requested that a new exclusion be added for non-general system tourist railroads.

FRA did not intend to alter the current "installation" exclusion in part 213 regarding tourist, scenic, historic, or excursion operations that are not part of the general system. Thus, as stated above, in § 213.3(b)(2) of the final rule, FRA incorporates language similarly utilized in part 242 to explicitly exclude tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation from part 213.

An anonymous commenter on the NPRM requested clarification as to whether plant railroads must comply with the requirements of part 213 for track over which general system railroads operate. The comment stated that if plant railroads must comply with part 213 for track within the plant over which general system railroads operate, it would be a large departure from past FRA practice and would burden the plant railroads. However, as stated above, FRA has always held that plant track over which general system railroads operate is subject to part 213, and FRA makes this clear in § 213.3(b)(1). The Policy Statement also specifically states that when a general system railroad enters a plant, its activities are covered by FRA's regulations during that period. The Policy Statement explains that, "[t]he plant railroad itself, however, does not get swept into the general system by virtue of the other railroad's activity, *except to the extent it is liable, as the track owner, for the condition of its track over which the other railroad operates during its incursion into the plant* (emphasis added)." In the Policy Statement, FRA reached the same conclusion for the leased track exception over which general system railroads operate: "As explained above, however, the track itself would have to meet FRA's standards if a general system railroad operated over it . . . ." *Id.* The plant railroad is only required to comply with part 213 for the track over which the general system railroad operates; other track in the plant is not subject to part 213.

In addition, an individual commenter recommended that specific language be included in § 213.3, requiring that certain subparts of part 213 (B, C, D, and E) apply to track within a plant over which a general system railroad operates. The commenter further suggested specifying that if the plant railroad designates such track as excepted track, the plant must comply with all provisions of part 213. FRA is not incorporating these suggestions into the regulation at this time. FRA has always held that plant track over which general system railroads operate is subject to part 213, as explained above, and FRA is making that clear in § 213.3(b)(1), as revised by this final rule.

#### *Section 213.113 Defective Rails*

*Paragraph (a).* In paragraph (a), FRA clarifies that only a person qualified under § 213.7 is qualified to determine that a track may continue to be utilized once a defective condition is identified in a rail. FRA accepts the RSAC

recommendation to add “or repaired” to paragraph (a)(1) to allow railroads to use recently-developed processes to remove the defective portion of the rail section and replace that portion utilizing recently-developed weld technologies commonly referred to as “slot weld” or “wide gap weld.” These processes allow the remaining portion of non-defective rail to remain in the track.

*Paragraph (b).* FRA redesignates former paragraph (b) as paragraph (d) and adds a new paragraph (b). Paragraph (b) provides that track owners have up to a four-hour period in which to verify that certain suspected defects exist in a rail section, once they learn that the rail contains an indication of any of the defects identified in paragraph (c)’s remedial action table. This four-hour, deferred verification period applies only to suspected defects that may require remedial action notes “C” through “I,” found in the remedial action table. This four-hour period does not apply to suspected defects that may require remedial action notes “A,” “A2,” or “B,” which are more serious and must continue to be verified immediately.

The four-hour timeframe provides flexibility to allow the rail flaw detector car to continue testing in a non-stop mode, without requiring verification of less serious, suspected defects that may require remedial action under notes “C” through “I.” This flexibility also helps to avoid the need to operate the detector car in a non-test, “run light” mode over a possibly severe defective rail condition that could cause a derailment, when having to clear the track for traffic movement. However, any suspected defect encountered that may require remedial action notes “A,” “A2,” or “B” requires immediate verification. Overall, the four-hour, deferred-verification period will help to improve rail flaw detector car utilization, increase the opportunity to detect more serious defects, and ensure that all the rail a detector car is intended to travel over while in service is inspected.

FRA is in agreement with the railroad industry that most tracks are accessible by road or hi-rail, and supports a deferred-verification process where the operator can verify the suspect defect location with a portable type of test unit. FRA also agrees that it is more beneficial to continue the car’s inspection past the location instead of leaving a possibly serious internal defect undetected in the track ahead.

*Paragraph (c).* FRA adds a new paragraph (c) to contain both the remedial action table and its notes, as revised, which formerly were included under paragraph (a). Specifically, FRA

revises the remedial action table regarding transverse defects. FRA places the “transverse fissure” defect in the same category as detail fracture, engine burn fracture, and defective weld because they all normally fail in a transverse plane. The RITF discussed the possible addition of compound fissure to this category as well, to combine all transverse-oriented defects under the same remedial action. However, FRA ultimately determined that “compound fissure” should not be included in this category because a compound fissure may result in rail failure along an oblique or angular plane in relation to the cross section of the rail and should be considered a more severe defect requiring more restrictive remedial action. In addition, in order to take rail head wear into consideration, FRA changes the heading of the remedial action table for all transverse-type defects (i.e., compound fissures, transverse fissures, detail fractures, engine burn fractures, and defective welds) to refer to the “percentage of existing rail head cross-sectional area weakened by defect,” to indicate that all transverse defect sizes are related to the actual rail head cross-sectional area. This modification will preclude the possibility that the flaw detector car operator may size transverse defects without accounting for the amount of rail head loss on the specimen.

FRA’s revisions to the remedial action table also reduce the current limit of eighty percent of the rail head cross-sectional area requiring remedial action notes “A2” or “E and H” to sixty percent of the rail head cross-sectional area. FRA reviewed the conclusions of the most recent study performed by the Transportation Technology Center, Inc., concerning the development of transverse-oriented detail fracture defects: *Improved Rail Defect Detection Technologies: Flaw Growth Monitoring and Service Failure Characterization*, AAR Report No. R-959, Davis, David D., Garcia, Gregory A., Snell, Michael E., September 2002. (A copy of this study has been placed in the public docket for this rulemaking.) The study concluded that detail fracture transverse development is considered to be inconsistent and unpredictable. Further, the average growth development of the detail fracture defects in the study exceeded five percent of the cross-sectional area of the rail head per every one mgt of train traffic. *Id.*, at Table 1. Recognizing the impact of these findings, FRA believes that detail fracture defects reported as greater than sixty percent of the cross-sectional area of the rail head necessitate the remedial

actions required under this section, specifically that the track owner assign a person designated under § 213.7 to supervise each operation over the defect or apply and bolt joint bars to the defect in accordance with § 213.121(d) and (e), and limit operating speed over the defect to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

FRA also adds a required remedial action for a longitudinal defect that is associated with a defective weld. This addition is based on current industry detection and classification experience for this type of defect. FRA adds this defect to the remedial action table and includes all longitudinal defects within one group subject to identical remedial actions based on their reported sizes. These types of longitudinal defects all share similar growth rates and the same remedial actions are considered appropriate for each type. FRA makes clear that defective weld also continues to be identified in the remedial action table for transverse-oriented defects.

The final rule expressly adds “crushed head” to the remedial action table. This type of defect may affect the structural integrity of the rail section and impact vehicle dynamic response in the higher speed ranges. AAR and NTSB pointed out in their comments on the NPRM that the remedial action table had several changes that were not included in the consensus language generated by the Task Force meetings. In particular, AAR mentioned that a flattened rail/crushed head defect has always been defined in the remedial action table as having a depth greater than or equal to  $\frac{3}{8}$  inch and a length greater than or equal to 8 inches. However, in the NPRM’s remedial action table, a flattened rail/crushed head defect was defined as having a depth greater than  $\frac{3}{8}$  inch and a length greater than 8 inches.

FRA did not intend to change the consensus language in this area of the remedial action table. It appears that the changes were inadvertent, and FRA agrees with these commenters that the entries for flattened rail and crushed head defects should be defined in the remedial action table as having a depth greater than or equal to  $\frac{3}{8}$  inch and a length greater than or equal to 8 inches. A crushed head defect is identified in the table and defined in paragraph (d) of this section accordingly.

AAR and an individual commenter recommended in their comments on the NPRM that the proposed changes to this section should be also be made to subpart G of the Track Safety Standards to ensure consistency in the remedial

action tables and rail defect definitions among all classes of track. However, the changes to the regulation as found in this final rule do not adequately address Class 6 through 9 track in areas such as rail remedial action and test frequency. Thus, FRA will consider taking action in a separate, future proceeding as necessary to address the safety of high-speed operations.

FRA notes that, during the RITF discussions, AAR expressed some concern regarding Footnote 1 to the remedial action table, which identifies conditions that could be considered a "break out in rail head." AAR pointed out that there had been previous incidents where an FRA inspector would consider a chipped rail end as a rail defect under this section, and at times the railroad was issued a defect or violation regarding this condition. FRA makes clear that a chipped rail end is not a designated rail defect under this section and is not, in itself, an FRA-enforceable defective condition. FRA also intends to make clear in the Track Safety Standards Compliance Manual guidance for FRA inspectors that a chipped rail end is not to be considered as a "break out in rail head."

FRA adds a second footnote, Footnote 2, to the remedial action table. The footnote provides that remedial action "D" applies to a moon-shaped breakout, resulting from a derailment, with a length greater than 6 inches but not exceeding 12 inches and a width not exceeding one-third of the rail base width. FRA has made this change to allow relief because of the occurrence of multiple but less severe "broken base" defects that result from a dragging wheel derailment and may otherwise prevent traffic movement if subject to more restrictive remedial action. FRA also recommends that track owners conduct a special visual inspection of the rail pursuant to § 213.239, before the operation of any train over the affected track. A special visual inspection pursuant to § 213.239, which requires that an inspection be made of the track involved in a derailment incident, should be done to assess the condition of the track associated with these broken base conditions before the operation of any train over the affected track.

#### Revisions to the "Notes" to the Remedial Action Table

*Notes A, A2, and B.* Notes A, A2, and B are published in their entirety without substantive change.

*Note C.* FRA revises remedial action note C, which applies specifically to detail fractures, engine burn fractures, transverse fissures, and defective welds, and addresses defects that are

discovered during an internal rail inspection required under § 213.237 and whose size is determined not to be in excess of twenty-five percent of the rail head cross-sectional area. For these specific defects, a track owner formerly had to apply joint bars bolted only through the outermost holes at the defect location within 20 days after it had determined to continue the track in use. However, evaluation of recent studies on transverse defect development shows that slow crack growth life is inconsistent and unpredictable. Therefore, FRA believes waiting 20 days to repair this type of defect is too long. Accordingly, as revised in this final rule, for these specific defects a track owner must apply joint bars bolted only through the outermost holes to the defect within 10 days after it is determined to continue the track in use. When joint bars have not been applied within 10 days, the track speed must be limited to 10 m.p.h. until joint bars are applied. The RITF recommended including this addition to allow the railroads alternative relief from remedial action for these types of defects in Class 1 and 2 track, and FRA agrees.

*Note D.* FRA revises remedial action note D, which applies specifically to detail fractures, engine burn fractures, transverse fissures, and defective welds, and addresses defects that are discovered during an internal rail inspection required under § 213.237 and whose size is determined not to be in excess of 60 percent of the rail head cross-sectional area. Formerly, for these specific defects, a track owner had to apply joint bars bolted only through the outermost holes at the defect location within 10 days after it is determined that the track should continue in use. However, evaluation of recent studies on transverse defect development shows that slow crack growth life is inconsistent and unpredictable. Therefore, FRA determined that allowing a 10-day period before repairing this type of defect is too long. Instead, as revised in this final rule, for these specific defects a track owner must apply joint bars bolted only through the outermost holes to the defect within 7 days after it is determined to continue the track in use. A timeframe of 7 days is sufficient to allow for replacement or repair of these defects, no matter when a defect is discovered. The rule also requires that when joint bars have not been applied within 7 days, the speed must be limited to 10 m.p.h. until joint bars are applied. The RITF recommended this addition to allow the railroads

alternative relief from remedial action for these types of defects in Class 1 and 2 track, and FRA agrees.

*Note E.* Note E is published in its entirety without substantive change.

*Note F.* FRA revises note F so that if the rail remains in the track and is not replaced or repaired, the re-inspection cycle starts over with each successive re-inspection unless the re-inspection reveals the rail defect to have increased in size and therefore become subject to a more restrictive remedial action. This process continues indefinitely until the rail is removed from the track or repaired. If not inspected within 90 days, the speed is limited to that for Class 2 track or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower, until inspected. This change defines the re-inspection cycle and requires the railroad to continue the re-inspection or apply a reduction in speed.

*Note G.* Note G formerly required the track owner to inspect the defective rail within 30 days after determining that the track should continue to be used. FRA revises note G so that if the rail remains in the track and is not replaced or repaired, the re-inspection cycle starts over with each successive re-inspection unless the re-inspection reveals the rail defect to have increased in size and therefore become subject to a more restrictive remedial action. This process continues indefinitely until the rail is removed from the track or repaired. If not inspected within 30 days, the track owner is required to limit the speed to that for Class 2 track or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower, until inspected. This change defines the re-inspection cycle and requires the track owner to continue the re-inspection or apply a reduction in speed.

*Notes H and I.* Notes H and I are published in their entirety without substantive change.

*Paragraph (d).* FRA redesignates former paragraph (b) as paragraph (d) and revises it to define terms used in this section and in § 213.237, by reference. Definitions provided in former paragraphs (b)(1), (3) through (8), (10) through (13), and (15) are published in their entirety without substantive change. However, three terms are redefined (compound fissure, defective weld, and flattened rail), one is added (crushed head), and all terms are enumerated in alphabetical order.

*(d)(3) Compound fissure.* FRA revises this definition, which includes removing the last sentence of the former definition in paragraph (b)(2) providing that "[c]ompound fissures require

examination of both faces of the fracture to locate the horizontal split head from which they originate.” Rail failure analysis where a pre-existing fatigue condition is present normally exhibits an identical, identifiable defective condition on both rail fracture faces. Thus, analysis of one fracture face should be sufficient to determine the type of defect, the origin of the defect, and the size of the defect. Additionally, it is typical in the railroad industry that only one failure fracture face is retained during the subsequent repair phase of rail replacement. Therefore, FRA has determined that the examination of only one fracture face is necessary to identify the horizontal split head from which compound fissures originate, and modifies the definition accordingly.

(d)(4) *Crushed head.* As discussed earlier, FRA expressly adds crushed head to the remedial action table. FRA recognizes that rail flaw detection operators currently detect and classify this type of defect, and this addition provides a remedial action for the track owners to use. Crushed head is identified in the table and defined by the current industry standard as being a short length of rail, not at a joint, which has drooped or sagged across the width of the rail head to a depth of  $\frac{3}{8}$  inch or more below the rest of the rail head and 8 inches or more in length. FRA requires that measurements taken to classify the crushed head defect not include the presence of localized chips or pitting in the rail head. FRA notes that it will include this language in a section on “Crushed head” in the Track Safety Standards Compliance Manual.

(d)(6) *Defective weld.* In general, this definition continues to define defective weld for purposes of the transverse-oriented defects identified in the remedial action table. FRA modifies the definition of defective weld by adding that if the weld defect progresses longitudinally through the weld section, the defect is considered a split web for purposes of the remedial action required by this section. As discussed above, FRA includes defective weld in the remedial action table for a longitudinal defect that is associated with a defective weld. FRA has determined that the railroad industry currently detects and classifies this type of defect, and the inclusion codifies a specific remedial action for the railroads to utilize. FRA recognizes that these defects develop in an oblique or angular plane within the rail section and have growth rates comparable to other longitudinal-type defects; therefore, FRA believes that the same remedial action is appropriate.

(d)(9) *Flattened Rail.* FRA modifies the definition of flattened rail so that it

is aligned with the current industry standard and the remedial action table’s requirements as rail flattened out across the width of the rail head to a depth of  $\frac{3}{8}$  inch or more below the rest of the rail and 8 inches or more in length. Formerly, this definition described only the width of the rail, which remains unchanged. This definition now includes the length of the rail as well, which is specified in the remedial action table.

#### *Section 213.119 Continuous Welded Rail (CWR); Plan Contents*

FRA removes the former requirement under paragraph (h)(7)(ii) of this section to generate a Joint Bar Fracture Report (Fracture Report) for every cracked or broken CWR joint bar that the track owner discovers during the course of an inspection. Under former paragraph (h)(7)(ii)(C) of this section any track owner, after February 1, 2010, could petition FRA to conduct a technical conference to review fracture report data submitted through December 2009 and assess the necessity for continuing to collect this data. One Class I railroad submitted a petition to FRA, and on October, 26, 2010, a meeting of the RSAC Track Safety Standards Working Group served as a forum for a technical conference to evaluate whether there was a continued need for the collection of these reports. The Group ultimately determined that the reports were costly and burdensome to the railroads and their employees, while providing little useful research data to prevent future failures of CWR joint bars. The Group found that Fracture Reports were not successful in helping to determine the root cause of CWR joint bar failures because the reports gathered only a limited amount of information after the joint bar was already broken.

Instead, the Group recommended that a new study be conducted to determine what conditions lead to CWR joint bar failures and include a description of the overall condition of the track in the vicinity of the failed joint(s), track geometry (gage, alignment, profile, cross-level) at the joint location, and the maintenance history at the joint location, along with photographic evidence of the failed joint. Two Class I railroads volunteered to participate in a new joint bar study, which is expected to provide better data to pinpoint why CWR joint bars fail. In the meantime, given that FRA does not find it beneficial to retain the requirement for railroads to submit the Fracture Reports, FRA removes the requirement and reserves the paragraph.

#### *Section 213.237 Inspection of Rail*

*Paragraph (a).* Under former paragraph (a) of this section, Class 4 and 5 track, as well as Class 3 track over which passenger trains operate, was required to be tested for internal rail defects at least once every accumulation of 40 mgt or once a year (whichever time was shorter). Class 3 track over which passenger trains do not operate was required to be tested at least once every accumulation of 30 mgt or once per year (whichever time was longer). These maximum tonnage and time intervals for inspecting rail have been revised and moved to new paragraph (c). When these inspection requirements were drafted, track owners were already initiating and implementing the development of a performance-based, risk management concept for determining rail inspection frequency, which is often referred to as the “self-adaptive scheduling method.” Under this method, inspection frequency is established annually based on several factors, including the total detected defect rate per test, the rate of service failures between tests, and the accumulated tonnage between tests. The track owners then utilize this information to generate and maintain a service failure performance target.

This final rule revises paragraph (a) to require track owners to maintain service failure rates of no more than 0.1 service failure per year per mile of track for all Class 4 and 5 track; no more than 0.09 service failure per year per mile of track for all Class 3, 4, and 5 track that carries regularly-scheduled passenger trains or is a hazardous materials route; and no more than 0.08 service failure per year per mile of track for all Class 3, 4, and 5 track that carries regularly-scheduled passenger trains and is a hazardous materials route.

The changes to this section codify standard industry good practices. With the implementation of the self-adaptive scheduling method, track owners have generally tested more frequently than they have been required, and the test intervals align more closely with generally-accepted maintenance practices. The frequency of rail inspection cycles varies according to the total detected defect rate per test; the rate of service failures, as defined in paragraph (j) below, between tests; and the accumulated tonnage between tests—all of which are factors that the railroad industry’s rail quality managers generally consider when determining test schedules.

In 1990, as a result of its ongoing rail integrity research, FRA released report DOT/FRA/ORD-90/05; *Control of Rail*

*Integrity by Self-Adaptive Scheduling of Rail Tests*; Volpe Transportation Systems Center; Oscar Orringer. The research objective was to provide the basis for a specification to adequately control the scheduling of rail tests, and the research provided quantitative guidelines for scheduling rail tests based on rail defect behavior. The purpose of this method for scheduling rail tests is to establish a performance goal that is optimized to control rail flaw development and subsequent rail failure in a designated track segment. If the performance goal is not met, a responsive adjustment is triggered in the rail test schedule to ensure that the goal is met.

The research determined that a minimum requirement for annual rail testing is a baseline figure of 0.1 service failure per mile for freight railroads. This baseline value can then be adjusted depending on the characteristics of the individual railroad's operation and internal risk control factors. For instance, a rail segment that handles high-tonnage unit trains and also supports both multiple passenger trains and trains carrying hazardous materials each day may require scheduling rail test frequencies adequate to maintain a performance goal of 0.03 service failure. The baseline value applied for determining rail test frequencies should also be adjusted based on specific conditions that may influence rail flaw development such as age of the rail, rail wear, climate, etc. As a result, the RITF reached consensus that 0.1 service failure per mile was established as an appropriate minimum performance requirement for use in the U.S. freight railroad system. The RITF also reached consensus that the minimum performance requirement should be adjusted to no more than 0.09 service failure per year per mile of track for all Class 3, 4, and 5 track that carries regularly-scheduled passenger trains or is a hazardous materials route, and no more than 0.08 service failure per year per mile of track for all Class 3, 4, and 5 track that carries regularly-scheduled passenger trains and is a hazardous materials route.

*Paragraph (b).* Former paragraph (b) is redesignated as paragraph (f) without substantive change. Under new paragraph (b), each rail inspection segment is designated by the track owner. While the RITF discussed at length how best to define the term "segment" as it relates to inspection of rail under this section, ultimately the RITF could not come to a consensus on a definition. Specifically, the BMWED, NTSB and AAR were split on how best to define this term, and so no

recommendation was ever made to the full RSAC. The BMWED and NTSB were concerned that collecting service failure rates that were averaged over excessively large segments of track (such as segments longer than a subdivision length) would fail to identify discrete areas of weakness with chronically high concentrations of service failures. At the same time, the BMWED and NTSB also recognized that if a segment size was too small, one random failure could trigger a service failure rate in excess of the performance target under this section. Consequently, the BMWED and NTSB recommended that FRA impose a specific, uniform segment rate to be used by all railroads that is calculated to achieve the optimal length.

The AAR, on the other hand, maintained that each individual railroad is in the best position to determine its own segment lengths based on factors that are unique to the railroad's classification system. The AAR noted that each railroad has distinct segment configurations and challenges for which each railroad has developed specific approaches to identify and address them. The AAR believed that it was not possible to define a single methodology to appropriately address every railroad's specific configurations and factors, and that any approach established in a regulation would be extremely difficult and costly to implement. The AAR stated that the large amount of route miles, complex networks, and vast quantities of data being analyzed on Class I railroads requires an automated, electronic approach that integrates satisfactorily with each railroad's data system, which currently Class I railroads utilize. Arbitrary segmentation limitations developed through regulation would not be compatible with some of those systems and would create an onerous and costly burden of redesigning systems, with little overall improvement to safety, according to the AAR. The AAR maintained that each individual service failure represents a certain risk which is not affected by whether it is close to other service failures. The AAR asserted that the railroads want the service failure rate to be as low as possible and look for any patterns in service failures that suggest ways to reduce the service failure rate. Noting that these patterns can be affected by a myriad of different factors, the AAR stated that trying to create artificial boundaries on the length of a segment could lead to a less than optimal use of internal rail inspection capabilities, as well as decreased safety.

In the NPRM, FRA acknowledged the BMWED's and NTSB's concerns

regarding identifying localized areas of failure. However, FRA also recognized that track owners have designed their current rail inspection segment lengths over a decade of researching their own internal rail testing requirements. FRA noted that this research takes into consideration pertinent criteria such as rail age, accumulated tonnage, rail wear, track geometry, and other conditions specific to these individually-defined segments. FRA stated that altering existing rail inspection segment lengths, such as by requiring a designated segment length without extensive data and research, could disrupt current engineering policies and result in problematic and costly adjustments to current maintenance programs without providing significant safety benefits.

FRA also concluded that track owners, as well as FRA, would be able to capture rail failure data, even in large segment areas, by simply looking at rail failure records and comparing milepost locations. Therefore, in the NPRM, FRA decided not to require a uniform segment length to be applied by all track owners. Instead, FRA proposed to require that track owners utilize their own designated segment lengths in place by the effective date of this final rule. However, in order to maintain consistency and uniformity, FRA proposed to require that if a track owner wished to change or deviate from its designated segment lengths, the track owner must receive FRA approval to make any such change. This would ensure that the track owner does not have the ability to freely alter a defined segment length in order to compensate for a sudden increase of detected defects and service failures that could require an adjustment to the test frequency as a result of accelerated defect development.

In its comments on the NPRM, BMWED acknowledged that the NPRM provisions in § 213.237(b) for rail inspection segment codify current industry practices, but stated that they thought that the proposal would do little to improve upon them. Rather, BMWED asserted that FRA's proposal would undermine the intent and effectiveness of the rule as it relates to service failure rates. BMWED proposed that FRA amend the rule to require each track owner to review rail service failure records annually per "variable" mile of track (i.e., a "floating mile" within an inspection segment) for compliance with § 213.237(a), and apply the provisions of § 213.237(d) to any variable mile of track exceeding the service failure rates identified in § 213.237(a). Additionally, BMWED proposed that FRA annually audit each

track owner for compliance by comparing rail failure records utilizing the variable mile of track concept within inspection segments.

NTSB also asserted through its comments on the NPRM that there were problems with relating segment length to the "milepost limits for the individual rail inspection frequency" in this section. NTSB stated that track owners may need to adjust inspection frequency on portions of a segment and that could vary from year to year. According to NTSB, the track owner would have to inspect the entire segment at the same frequency or file with FRA to establish smaller segments with different inspection frequencies, which NTSB believed could provide a disincentive to conducting targeted inspections of problem areas.

While FRA continues to recognize BMWED's and NTSB's concerns, FRA has decided not to alter the text as proposed in the NPRM. FRA is concerned that defining a specific segment length that would apply uniformly to all track owners would greatly exceed the expectations of minimum track safety standards and result in an excessive amount of segments that would be too large for the current fleet of rail inspection vehicles to cover. This would become too costly and burdensome for track owners to manage, and ultimately render this part of the rule ineffective.

Nonetheless, in its comments on the NPRM, AAR disagreed with the proposed requirement that FRA must grant approval for any change to a railroad's designated test segments. AAR contended that FRA approval for such changes would be unnecessary, since FRA approval would not be required for the initial designation of a segment. Instead, AAR suggested that if after a railroad notifies FRA of any change to a designated segment, FRA detects any problem with the change, the new provisions proposed under § 213.241 regarding FRA's review of inspection records would determine compliance.

FRA supports the intent of the text as proposed in the NPRM and makes clear that FRA approval to change a segment length is required to ensure that the segment change will not have any detrimental impact on overall safety. To change the designation of a rail inspection segment or to establish a new segment pursuant to this section, a track owner must submit a detailed request to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer (Associate Administrator). Within 30 days of receipt of the submission, FRA will review the request. FRA will then

approve, disapprove or conditionally approve the submitted request, and will provide written notice of its determination. Consequently, while track owners will be able to designate their rail inspection segment lengths as of the effective date of the final rule, FRA approval of proposed changes to these segment lengths will ensure that the changes do not negatively impact safety, such as a change to a segment length specifically to absorb an area of defect development and rail failure to unacceptably reduce the test inspection frequency.

*Paragraph (c).* FRA redesignates former paragraph (c) as paragraph (e) and revises it, as discussed below. New paragraph (c) contains maximum time and tonnage intervals for rail inspections that are based on former paragraph (a) and revised. Specifically, FRA requires that internal rail inspections on Class 4 and 5 track, or Class 3 track with regularly-scheduled passenger trains or that is a hazardous materials route, not exceed a time interval of 370 days between inspections or a tonnage interval of 30 mgt between inspections, whichever is shorter. The 370-day interval or 30-mgt accumulation, whichever is shorter, provides a maximum timeframe and a maximum tonnage interval between tests on lines that may not be required to undergo testing on a more frequent basis in order to achieve the performance target rate. If maximum limits were not set, for example, a railroad line carrying only 2 mgt a year could possibly go 15 years without testing. Such a length of time without testing was unacceptable to the Task Force. Paragraph (c) also provides that internal rail inspections on Class 3 track that is without regularly-scheduled passenger trains and not a hazardous materials route must be inspected at least once each calendar year, with no more than 18 months between inspections, or at least once every 30 mgt, whichever interval is longer, but in no case may inspections be more than 5 years apart.

In its comments on the NPRM, New Jersey Transit Rail Operations (NJTR) took issue with the NPRM's proposed changes to paragraph (c). NJTR stated that requiring a test to be completed within 370 calendar days would result in NJTR scheduling successive tests earlier in each calendar year, to the point that a test may have to be scheduled at a time when it is impractical to conduct a test, such as during "leaf" season, which affects commuter rail agencies in the Northeast. NJTR proposed that the paragraph be revised to replace both the 370-day

interval and the 18-month interval with a uniform 15-month or 450-day interval.

The Metropolitan Transit Authority (MTA) also raised concern with the proposed changes to paragraph (c). According to MTA, it has certain crossovers that trains operate over at Class 3 and Class 4 speeds that it currently tests once per year and it has difficulty in scheduling testing on these crossovers with the current high volume of service and availability of testing equipment. MTA proposed that paragraph (c) be revised to replace the 370-day interval with a uniform 400-day interval.

FRA does not agree with extending the timeframe between testing on certain portions of Class 3 and Class 4 tracks as a result of difficulty in scheduling testing on these tracks due to the volume of service or the availability of testing equipment. It is standard practice that many track owners maintain a predictable and consistent test schedule throughout the year. However, other track owners do schedule their tests as determined by seasonal issues or resource availability. This can vary from region to region. Nonetheless, FRA believes that 370 days allows all track owners sufficient time to plan their test schedules to account for the volume of traffic, availability of testing equipment, change of seasons, or similar issues that they each may face. In particular, FRA notes that 370 days is the maximum inspection interval allowed and is not intended in any way to restrict a railroad's ability to conduct inspections more frequently. Indeed, FRA expects that most railroads would conduct annual inspections on a relatively fixed schedule, using the additional days allowed for scheduling flexibility.

FRA notes that the maximum tonnage interval for testing internal rail defects on Class 4 and 5 track, and certain Class 3 track, has decreased from 40 mgt in former paragraph (a) of this section to 30 mgt. This change results from studies showing that, while the predominant factor that determines the risk of rail failure is the rate of development of internal rail flaws, the development of internal rail flaws is neither constant nor predictable. Earlier studies on the development of transverse-oriented rail defects showed the average development period to be 2% of the cross-sectional area of the rail head per mgt, which meant that rail testing would have to be completed with every 50 mgt. However, the RITF took into consideration the conclusions of a more recent study performed by the Transportation Technology Center, Inc., *Improved Rail Defect Detection*

*Technologies: Flaw Growth Monitoring and Service Failure Characterization*, concerning the development of transverse-oriented detail fracture defects, cited in the discussion of § 213.113(c), above. The study concluded that detail fracture transverse development averaged 5% of the cross-sectional area of the rail head per mgt. By itself, this finding would mean that testing would need to be completed no less frequently than every 20 mgt. However, because of the very lack of consistency and predictability in the development of internal rail flaws to allow such a firm conclusion to be drawn from the study, consensus was instead reached to lower this section's 40-mgt maximum tonnage limit between tests to a maximum of 30 mgt.

Selecting an appropriate frequency for rail testing is a complex task involving many different factors including rail head wear, accumulated tonnage, rail surface conditions, track geometry, track support, steel specifications, temperature differentials, and residual stresses. Taking into consideration the above factors, FRA's research suggests that all of these criteria influence defect development (and ultimately rail service failure rates) and are considered in the determination of rail inspection frequencies when utilizing the performance-based, self-adaptive test method.

For track owners without access to a sophisticated self-scheduling algorithm to determine testing frequencies, FRA has posted an algorithm program designed by the Volpe Center on the FRA Web site at [www.fra.dot.gov](http://www.fra.dot.gov). The algorithm requires five inputs: (1) Service failures per mile in the previous year; (2) detected defects per mile in the previous year; (3) annual tonnage; (4) number of rail tests conducted in the previous year; and (5) the targeted number of service failures per mile. Once the input is complete, the algorithm will take the average of two numbers when it calculates the number of rail tests. The first number will be based on the service failure rate. The second will be based on the total defect rate, which is the service defect rate plus the detected defect rate. This rate of designated tests per year for the designated segment will be the number of required tests per year enforced by FRA for the segment.

In paragraph (c)(2), the final rule also includes the addition of requirements for inspection of rail intended for reuse, or "plug rail." On March 8, 2006, FRA issued Notice of Safety Advisory 2006-02 (SA), which promulgated recommended industry guidelines for the reuse of plug rail. 71 FR 11700. The

recommendations in the SA consisted of two options for assuring that reused rail was free from internal defects.

Specifically, FRA's SA recommended that the entire length of any rail that is removed from track and stored for reuse be retested for internal flaws. FRA also recommended that, recognizing that some track owners do not have the equipment to test second-hand rail in accordance with the recommendation above, track owners were encouraged to develop a classification program intended to decrease the likelihood that a second-hand rail containing defects would be installed back into active track. In addition, FRA recommended that a highly visible, permanent marking system be developed and used to mark defective rails that railroads remove from track after identifying internal defects in those rails.

During some of the first RITF discussions, NTSB expressed concern over one aspect of FRA's SA: The guidance that provides that rail is suitable for reuse if it has not accumulated more than 15 mgt since its last valid rail test. NTSB suggested that such rail could experience up to 55 mgt before its next inspection if it were put in track at a location that had just been inspected and whose inspection frequency is every 40 mgt. NTSB believed that all plug rail should be immediately inspected prior to reuse.

NTSB also had concerns regarding the proposed rule language in paragraph(c)(2), which would allow the accumulation of 30 mgt before ensuring replacement rail is free from detectable defects. In its comments on the NPRM, NTSB did not agree with FRA that some track owners do not have the equipment to test secondhand rail in accordance with NTSB's Safety Recommendation R-02-05, which NTSB believed should be incorporated into the final rule in its entirety. R-02-05 states that FRA should "require railroads to conduct ultrasonic or other appropriate inspections to ensure that rail used to replace defective segments of existing rail is free from internal defects."

During RITF discussions, track owners described their method for assuring that rail intended for reuse is free of internal defects. In general, it was found that most track owners perform an ultrasonic inspection on rail intended for reuse while in the track and allow accumulation of tonnage prior to removal, or they perform an inspection and certification process of the rail after it has been taken out of service and prior to re-installation. However, they stressed that plug rail inspection requirements should not be overly burdensome and should meet the

same standards as any other rail inspections per the regulations.

FRA shares the track owners' concerns about creating a standard for rail inspection that would allow up to a 30-mgt accumulation on in-service rail, but would mandate immediate inspection of plug rail prior to reuse. Consequently, the final rule requires plug rail to be inspected at the same frequency as conventional rail. This requirement therefore supersedes FRA Safety Advisory 2006-02 and codifies current industry practice by allowing the use of rail that has been previously tested to be placed in track and retested at the normal frequency for that track segment. Nonetheless, all else being equal, FRA does recommend that the rail be tested prior to installation in track for reuse, even though FRA believes that requiring the track owner to test the rail immediately prior to re-installation is too restrictive. Alternatively, FRA believes that the track owner should have knowledge of the date the rail was last tested and ensure that the 30-mgt maximum tonnage accumulation is not exceeded prior to retesting the rail. In this regard, paragraph (c)(2) requires that the track owner be able to verify that any plug installed after the effective date of this final rule has not accumulated more than a total of 30 mgt in previous and new locations since its last internal rail flaw test, before the next test on the rail required by this section is performed. Thereafter, the rail must be tested in accordance with the test frequency of the designated segment in which it is installed.

FRA notes that the AAR, in its comments on the NPRM, requested that the verification language proposed in paragraph (c)(2) be revised to clarify that the regulation applies only to plug rail installed after the regulation's effective date. Otherwise, AAR believed the text as proposed in the NPRM would require railroads to identify each location where rail was installed in the past and retest each plug location, causing extra burden and expense.

FRA makes clear that it is not FRA's intent to require track owners to identify each location where rail was installed prior to the effective date of the final rule and retest each plug location, which would be too costly and burdensome for most track owners. FRA is aware that the majority of the plug rails that were previously installed have been absorbed into the track owners' current inspection cycles and have been tested while in track. Therefore, a requirement to re-inspect the previously installed plug rails would be unnecessarily restrictive and would not



have a significant impact on safety. Accordingly, paragraph (c)(2) in the final rule makes clear that the verification requirement applies only to plug rail installed after the regulation's effective date. Similarly, in preparing the final rule FRA has modified paragraph (c)(3) to make clear that the provision applies only after the regulation's effective date.

*Paragraph (d).* Former paragraph (d) is redesignated as paragraph (g) and revised, as discussed below. New paragraph (d) contains restrictions that apply if the service failure target rate identified in paragraph (a) is not achieved on a segment of track for two consecutive twelve-month periods. FRA recognizes that the service failure target rate may be exceeded within one defined twelve-month period. Therefore, the track owner is allowed an additional year to adjust its rail integrity management program to bring the service failure rate on the offending track segment into compliance with the requirements. If the service failure target rate is exceeded for two consecutive twelve-month periods, the track owner is required to comply with the requirements in paragraph (d) for either a minimum rail test frequency or a speed restriction on the offending track segment.

In its comments on the NPRM, NTSB disagreed with the language proposed in paragraph (d)(1) concerning the service failure rate. NTSB stated that the performance-based, risk management approach proposed in the NPRM may be a step in the right direction to mitigate risk of rail failure. However, according to NTSB, in order to be consistent with damage tolerance principles, the algorithms and methods used by the track owners should have the capability to identify areas of high stress that would suggest worn rail conditions, poor track support, rail with high accumulated tonnage, or rail with high residual stresses. NTSB stated that there was no systematic approach in the NPRM that would assure that FRA could use the data to ensure acceptable performance. Consequently, NTSB recommended that track owners should be required to regularly report service failure information to FRA and that FRA should review service failure data on a regular basis not only across entire segments to assess the overall performance of the track owner as proposed in the NPRM, but also in shorter lengths of track to assess track owner performance in timely identification and remediation of areas that are at high risk of failure.

In the final rule, FRA continues to support the rule text as proposed in the

NPRM. FRA believes that the remedial action for inspection frequency in paragraph (d)(1)(i), which requires that the segment be tested every 10 mgt if the performance target is not met for two consecutive years, ensures that an optimal amount of inspection is conducted in order to capture areas where accelerated defect development is occurring and not restrict railroads so significantly that they cannot inspect other segments as required by paragraph (a). Further, during RITF meetings there was much discussion that the practice of increased test frequency on localized areas would lead to unmanageable amounts of test frequencies. The AAR noted that there is a limited supply of inspection vehicle resources and test operators, and that a greatly increased amount of test frequencies would not be achievable by the railroads. FRA agrees, and notes that its rail integrity specialists will be reviewing service failure data on a regular basis. During these reviews, FRA will seek to identify any instances where shorter lengths of track have high failure rates and will follow up as necessary.

*Paragraph (e).* As noted above, FRA is redesignating former paragraph (c) as paragraph (e) with some revision. Specifically, in paragraph (e) FRA requires that each defective rail be marked with a highly visible marking on both sides of the web and base except that, where a side or sides of the web and base are inaccessible because of permanent features, the highly visible marking may be placed on or next to the head of the rail. This option to mark the rail head in certain situations provides an alternative to the railroad in areas where the web and base may not be accessible. Former paragraph (e) is redesignated as paragraph (h) and revised, as discussed below.

*Paragraph (f).* As stated above, FRA redesignates former paragraph (b) as paragraph (f) without substantive change.

*Paragraph (g).* Paragraph (g) addresses circumstances where a valid search for internal rail defects cannot be made because of rail surface conditions, equipment issues, or other factors. Several types of technologies are presently employed to continuously search for internal rail defects, some capable of displaying and monitoring search signal returns. A continuous search is intended to mean an uninterrupted search by whatever technology is being used, so that there are no segments of rail that go untested. If the test is interrupted, e.g., as a result of rail surface conditions that inhibit the transmission or return of the signal, then the test over that segment of rail

may not be valid because it was not continuous. Therefore, in the final rule, a valid search for internal rail defects is defined in paragraph (j), below, as a "valid test" during which the equipment is performing as intended and equipment responses are interpreted by a qualified operator as defined in § 213.238. In conducting a valid search, the operator needs to determine that the test has not been compromised due to environmental contamination, rail conditions, or test equipment performance.

*Paragraph (h).* FRA redesignates former paragraph (e) as paragraph (h) and revises it. In paragraph (h), FRA specifies the options available to a railroad following a non-test. At least one of these options must be exercised prior to the expiration of the time or tonnage limits as specified in paragraph (a) or (c) of this section.

*Paragraph (i).* FRA adds new paragraph (i) to require that the rail flaw detector car operator be qualified as defined in new § 213.238, "Qualified operator," which prescribes minimum training, evaluation, and documentation requirements for personnel performing in this occupation.

*Paragraph (j).* FRA adds paragraph (j) to provide new definitions for terms that are used in this section. These terms are applicable only to this section.

*Hazardous materials route.* FRA defines "hazardous materials route" for purposes of determining the appropriate service failure target rate pursuant to paragraph (a) of this section. "Hazardous materials route" means track over which a minimum of 10,000 car loads or intermodal portable tank car loads of hazardous materials as defined in 49 CFR 171.8 travel over a period of one calendar year; or track over which a minimum of 4,000 car loads or intermodal portable tank car loads of the hazardous materials specified in 49 CFR 172.820 travel, in a period of one calendar year.

In its comments on the NPRM, UP raised concern that the definition of "hazardous materials route" proposed in the NPRM did not mirror the intent of the RITF. UP believed that, as proposed in the NPRM, the definition would apply to certain movements of hazardous materials over "any track of any class," when the intent was to apply the definition only to Class 3 or higher track classes.

In the final rule, FRA defines "hazardous materials route" consistent with the RITF's intent that the term apply only to track Classes 3 through 5, as the meaning was inadvertently changed in preparing the NPRM. However, FRA believes that it is

unnecessary and potentially confusing to specify in the definition that the term applies only to track Classes 3 through 5. The definition applies only to specific provisions of § 213.237 and only to Class 3, 4, or 5 track, or all three depending on the circumstances. Consequently, removing any mention of class of track in the definition is clearer and more concise. Separately, FRA notes that the RSAC consensus language recommended that the rule apply to those tracks carrying the defined hazardous materials “over a period of one year,” which could be construed as a rolling 12-month timeframe. To ensure that the interpretation of this period is consistent, and applied as intended, the definition makes clear that this period is “one calendar year.”

*Plug rail.* FRA defines “plug rail” to mean a length of rail that has been removed from one track location and stored for future use as a replacement rail at another location.

*Service failure.* FRA defines “service failure” to mean a broken rail occurrence, the cause of which is determined to be a compound fissure, transverse fissure, detail fracture, or vertical split head. Only the listed fatigue defects, i.e., compound fissure, transverse fissure, detail fracture, or vertical split head, are required to be utilized for determining the fatigue service failure rate. Since other defect types are more likely to go undetected, and how well defects can be detected is influenced by conditions other than fatigue, other defect types are not included in the service failure rate calculation.

*Valid search.* FRA provides a definition of “valid search” to help ensure that valid rail flaw detection tests under this section are conducted. Under this definition, the test equipment must perform as intended and equipment responses must be properly interpreted by a qualified operator as defined in § 213.238.

#### *Section 213.238 Qualified Operator*

FRA adds this new section to require that any entity that conducts rail flaw detection have a documented training program to ensure that a rail flaw detection equipment operator is qualified to operate each of the various types of equipment currently utilized in the industry for which he or she is assigned, and that proper training is provided when new rail flaw detection technologies are utilized.

In its comments on the NPRM, the AAR noted that this proposed section was inconsistent in specifying who bears the responsibility for evaluating a rail flaw detector car operator’s training.

The AAR believed the NPRM suggested that railroads must ensure that there are training programs in place and qualified operators but that the operators’ employers are responsible for actually providing the training and qualifying the operators. The AAR also noted that the responsibility of the employer of the personnel operating the rail flaw detection equipment is to provide training and qualification requirements, conduct training and testing, and supply training and qualification credentials. The AAR stated that in many cases the rail flaw detection equipment is proprietary and that the railroads would have neither the information nor the expertise necessary for such training and qualification. The AAR therefore recommended that FRA clarify § 213.238 to state that the provider of the rail flaw detection operator is responsible for the training and qualification requirements.

FRA is aware that it is the responsibility of the employer of the personnel operating the rail flaw detection equipment to develop training and qualification requirements, conduct training and testing, and supply training and qualification credentials. FRA concurs that the rail flaw detection equipment is often proprietary and that the track owner may not have the information or the expertise necessary for such training and qualification. For that reason, the final rule imposes the responsibility for implementing this section principally on the provider of the rail flaw detection equipment, which may of course be the track owner itself. However, FRA does believe that it is the responsibility of the track owner to reasonably ensure that any operator of rail flaw detection equipment over its track is qualified to conduct an inspection in accordance with the training and qualification requirements in this section, because the track owner is ultimately responsible for the conformance of its track and rail with the requirements of the Track Safety Standards. This responsibility is incorporated into paragraph (a).

As provided in paragraph (b), each operator of rail flaw detection equipment must have documentation from his or her employer that designates his or her qualifications to perform the various functions associated with the flaw detection process. Specifically, the requirements help ensure that each operator is able to conduct a valid search for internal rail flaws, determine that the equipment is functioning properly at all times, properly interpret the test results, and understand test equipment limitations.

In paragraph (c), the operator must receive a minimum amount of documented, supervised training according to the rail flaw detection equipment provider’s training program. FRA understands that this training may not be entirely held within the classroom environment and is in agreement that the employer should have the flexibility to determine the training process that is appropriate for demonstrating compliance. The operator is required to demonstrate proficiency for each type of equipment the employer intends the operator to use, and documentation must be available to FRA to verify the qualification.

As provided in paragraph (d), operator reevaluation and, as necessary, refresher training is required in accordance with the documented training program. The employer is provided flexibility to determine the process used in reevaluating qualified operators, including the frequency of operator reevaluation. The reevaluation process shall require that the employee successfully complete a recorded examination and demonstrate proficiency to the employer on the specific equipment type(s) to be operated. The reevaluation and recurrent training may also consist of a periodic review of test data submitted by the operator.

In paragraph (e), FRA requires that the employer maintain a written or electronic record of each operator’s qualification. The record must include the operator’s name, type of equipment qualification, date of initial qualification, and most recent reevaluation of his or her qualifications, if any. This paragraph is intended to ensure consistent recordkeeping and allow FRA to accurately verify compliance.

FRA provides in paragraph (f) that rail flaw detection equipment operators who have demonstrated proficiency in the operation of rail flaw detection equipment prior to publication of this final rule be considered qualified to operate the equipment as designated by the employer. Such an operator must thereafter undergo reevaluation in accordance with paragraph (d) of this section. Any employee that is considered for the position of qualified operator subsequent to the publication of this final rule must be qualified in accordance with paragraph (c) of this section.

Finally, in paragraph (g) FRA requires that the records specifically associated with the operator qualification process be maintained at a designated location and made available to FRA as requested, to assist in verifying compliance.

**Section 213.241 Inspection Records**

This section contains requirements for keeping, handling, and making available records of track inspections required in accordance with subpart F.

Paragraphs (a) and (b) remain unchanged.

FRA revises paragraph (c) to require that internal rail inspection records include the date of inspection, track identification and milepost for each location tested, type of defect found and size if not removed prior to the resumption of rail traffic, and initial remedial action as required by § 213.113. Paragraph (c) also requires that the records document all tracks that do not receive a valid test pursuant to § 213.237(g). These changes respond to a recommendation arising out of the report by DOT's OIG, "*Enhancing the Federal Railroad Administration's Oversight of Track Safety Inspections*," referenced above. The OIG recommended that FRA "[r]evis[e] its track safety regulations for internal rail flaw testing to require the railroads to report all track locations (milepost numbers or track miles) covered during internal rail flaw testing." See OIG report at p. 8. FRA has revised this section, accordingly. The last sentence of former paragraph (c) is moved to paragraph (d), as discussed below.

FRA redesignates former paragraph (d) as paragraph (f). In its place, FRA slightly modifies the last sentence in former paragraph (c) and redesignates it as paragraph (d). Paragraph (d) requires the track owners to maintain the rail inspection records at least for two years after an inspection has occurred and for one year after the initial remedial action has been taken. This information is vital for FRA to determine compliance with the rail integrity and inspection requirements in § 213.113 and § 213.237.

FRA redesignates former paragraph (e) as paragraph (g) without substantive change. In new paragraph (e), rail inspection records must be maintained to demonstrate compliance with § 213.237(a). This requirement is intended to provide sufficient information to determine that accurate data concerning detected defects is utilized by the railroads as input into the performance-based test frequency formula. During RITF discussions, track owners asked that FRA requests for records of rail inspections demonstrating compliance with required test frequencies be made by a designated FRA Rail Integrity Specialist; each track owner would then designate a person within its organization whom the Rail Integrity Specialists would

contact when requesting records of rail inspections. FRA agrees that this suggested approach is an efficient way to obtain inspection records and FRA intends to adopt this approach through guidance in FRA's Track Safety Compliance Manual.

As discussed above, FRA redesignates former paragraph (d) as paragraph (f) without substantive change. Paragraph (f) provides that track inspection records be made available for inspection and copying by FRA upon request.

Finally, as discussed above, FRA redesignates former paragraph (e) as paragraph (g) without substantive change. Paragraph (g) contains the requirements for maintaining and retrieving electronic records of track and rail inspections.

**Appendix B to Part 213—Schedule of Civil Penalties**

Appendix B to part 213 contains a schedule of civil penalties for use in connection with this part. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Accordingly, FRA is amending the penalty schedule to reflect the addition of a new section in this part, § 213.238, Qualified operator.

**VIII. Regulatory Impact and Notices****A. Executive Orders 12866 and 13563, and DOT Regulatory Policies and Procedures**

This final rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Orders 12866 and 13563 and DOT policies and procedures. See 44 FR 11034; February 26, 1979. FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this final rule.

As part of the regulatory evaluation, FRA has assessed the quantitative costs from the implementation of this rule and has a high degree of confidence that the majority of the rail industry is already in compliance with the new requirements; therefore, there are minimal costs associated with this rule. FRA's analysis follows DOT's revised "Guidance on the Economic Value of a Statistical Life in US Department of Transportation Analyses," published in March 2013. Based on real wage growth forecasts from the CBO, DOT's guidance estimates that there will be 1.07 percent annual growth rate in median real wages over a 20-year period (2014–2034). Real wages represent the purchasing power of nominal wages. FRA assumed an income elasticity of 1.0 and adjusted the

Value of Statistical Life (VSL) in future years in the same way. VSL is the basis for valuing avoided casualties. FRA's analysis further accounts for expected wage growth by adjusting the taxable wage component of labor costs. Other non-labor hour-based costs and benefits are not impacted.

In analyzing the benefits of the final rule, FRA estimates that over a 20-year period the industry will save \$62.9 million, with a present value (PV), discounted at 7 percent, of \$35.5 million. This cost-benefit analysis shows that the potential benefits from the rule will exceed the total costs. In fact, the estimated benefit shows an overall increase of 2.6% compared to the estimates provided in the NPRM. Part of this increase is due to the application of the CBO's real wage forecast, which adjusts the annual growth rate by 1.07 percent annually. FRA also determined that the initial implementation year would be 2014; therefore, all wages have been adjusted accordingly. The change in the initial implementation year accounts for the remainder of the increased benefits.

FRA considered the industry costs associated with the final rule, which include: New requirements for effective rail inspection frequencies, changes to rail flaw remedial actions, minimum qualification requirements for rail flaw detection equipment operators, and new requirements for rail inspection records. The bulk of this regulation revises FRA's Track Safety Standards by codifying the industry's current good practices. The only entities that may be impacted by portions of this rule are Class III railroads with Class 3, 4, or 5 track. For more details, please see the regulatory evaluation found in the docket.

FRA anticipates that this rulemaking will enhance safety by helping to allocate more time to rail inspections, increasing the likelihood of detecting more serious rail defects sooner, ensuring that qualified operators conduct rail inspections, and including more specific information in rail inspection records for analysis and compliance purposes. The main benefit associated with this rule is derived from granting railroads a four-hour window to verify certain defects found during an inspection. The defects subject to the deferred verification allowance are considered less likely to cause immediate rail failure, and require less restrictive remedial action. However, without the additional time to verify these defects, railroads must stop their inspections to avoid a possible civil penalty. The additional time both permits railroads to continue their

inspections and search for more serious defects and avoids the cost of paying their internal inspection crews or renting a rail flaw detector car an additional half day, saving the industry approximately \$8,400 per day. FRA believes the value of the anticipated benefits will easily justify the cost of implementing the final rule.

#### *B. Regulatory Flexibility Act and Executive Order 13272*

To ensure potential impacts of rules on small entities are properly considered, FRA has developed this final rule in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must prepare a regulatory flexibility analysis (RFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

This final rule amends the Federal Track Safety Standards to improve rail flaw detection processes and promote safety in railroad operations. In particular, FRA is specifying minimum qualification requirements for rail flaw detection equipment operators, as well as revising the requirements for effective rail inspection frequencies, rail flaw remedial actions, and rail inspection records. FRA is also removing regulatory requirements concerning joint bar fracture reporting.

(1) *Description of Regulated Entities and Impacts:* The "universe" of the entities to be considered generally includes only those small entities that are reasonably expected to be directly regulated by this action. This final rule directly affects Class I, Class II, and Class III railroads that operate over Class 3, 4, or 5 track.

"Small entity" is defined in 5 U.S.C. 601. Section 601(3) defines a "small entity" as having the same meaning as "small business concern" under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of this term not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation. The U.S. Small

Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is "for profit" may be and still be classified as a "small entity" is 1,500 employees for "Line Haul Operating Railroads" and 500 employees for "Switching and Terminal Establishments." Additionally, 5 U.S.C. 601(5) defines as "small entities" governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes "small entities" or "small businesses" as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1-1, which is \$20 million or less in inflation-adjusted annual revenues; and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891, May 9, 2003, codified at appendix C to 49 CFR part 209. The \$20 million-limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1-1. FRA is using this definition for this rulemaking.

*Railroads:* FRA regulates approximately 782 railroads. There are 7 Class I freight railroads and 10 Class II railroads, none of which are considered to be small. There are a total of 29 commuter/passenger railroads, including Amtrak, affected by this rule. However, most of the affected commuter railroads are part of larger public transportation agencies that receive Federal funds and serve major jurisdictions with populations greater than 50,000.

The level of costs incurred by each railroad should generally vary in proportion to the number of miles of Class 3, 4, or 5 track. For instance, railroads with less track should have lower overall costs associated with implementing the standards. There are 738 Class III railroads, of which, only 58 are affected by this rule. However, FRA has confirmation that the practices of 51 of these small railroads already conform with the requirements of this regulation. FRA believes that the practices of the remaining 7 Class III railroads also

conform with the requirements of this regulation, and that no small entity will be negatively impacted by this regulation as a result. FRA published this analysis in the Initial Regulatory Flexibility Analysis (IRFA) that accompanied the NPRM and requested comments. No comments were received on FRA's analysis of the rule's impact on small entities. Even if the 7 Class III railroads were impacted, the economic impact on them would likely not be significant.

If these 7 small railroads that FRA believes are in compliance with the rule are in fact not in compliance, the added costs would be minimal. Seven railroads would not be a substantial number of the 738 Class III railroads. FRA estimates that it would cost a Class III railroad \$2,000 per day to rent a rail flaw detector car. The average Class III railroad that owns Class 3, 4, or 5 track has approximately 70 miles of track. FRA estimates it would take 3 days to inspect each railroad's entire track. The total cost per railroad would be \$6,000 per year, for the base year. FRA has a high level of confidence that these railroads are already inspecting their track at least once a year. However, if these entities are not in compliance, FRA believes a cost of \$6,000 per year would not be a significant economic impact on any railroad.

During the public comment period following the NPRM, FRA did not receive any comments discussing the IRFA or Executive Order 13272. FRA certifies that the final rule will not have any significant economic impact on the competitive position of small entities, or on the small entity segment of the railroad industry as a whole.

(2) *Certification:* Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small railroads will be affected by the final rule, none of these entities will be significantly impacted.

#### *C. Paperwork Reduction Act*

The information collection requirements in this final rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the current and new information collection requirements and the estimated time to fulfill each requirement are as follows:

| CFR Section                                                                                                                | Respondent universe       | Total annual responses                | Average time per response | Total annual burden hours |
|----------------------------------------------------------------------------------------------------------------------------|---------------------------|---------------------------------------|---------------------------|---------------------------|
| 213.4—Excepted track:                                                                                                      |                           |                                       |                           |                           |
| —Designation of track as excepted .....                                                                                    | 236 railroads .....       | 20 orders .....                       | 15 minutes .....          | 5                         |
| —Notification to FRA about removal of excepted track.                                                                      | 236 railroads .....       | 15 notifications .....                | 10 minutes .....          | 3                         |
| 213.5—Responsibility for compliance .....                                                                                  | 728 railroads .....       | 10 notifications .....                | 8 hours .....             | 80                        |
| 213.7—Designation of qualified persons to supervise certain renewals and inspect track:                                    |                           |                                       |                           |                           |
| —Designations .....                                                                                                        | 728 railroads .....       | 1,500 names .....                     | 10 minutes .....          | 250                       |
| —Employees trained in CWR procedures ...                                                                                   | 37 railroads .....        | 80,000 tr. employees ...              | 8 hours .....             | 640,000                   |
| —Written authorizations and recorded exams.                                                                                | 37 railroads .....        | 80,000 auth. + 80,000 exams.          | 10 minutes + 60 minutes.  | 93,333                    |
| —Designations (partially qualified) under paragraph (c) of this section.                                                   | 37 railroads .....        | 250 names .....                       | 10 minutes .....          | 42                        |
| 213.17—Waivers .....                                                                                                       | 728 railroads .....       | 6 petitions .....                     | 24 hours .....            | 144                       |
| 213.57—Curves; elevation and speed limitations:                                                                            |                           |                                       |                           |                           |
| —Request to FRA for vehicle type approval                                                                                  | 728 railroads .....       | 2 requests .....                      | 40 hours .....            | 80                        |
| —Written notification to FRA prior to implementation of higher curving speeds.                                             | 728 railroads .....       | 2 notifications .....                 | 8 hours .....             | 16                        |
| —Written consent of track owners obtained by railroad providing service over that track.                                   | 728 railroads .....       | 2 written consents .....              | 45 minutes .....          | 2                         |
| 213.110—Gage restraint measurement systems (GRMS):                                                                         |                           |                                       |                           |                           |
| —Implementing GRMS—notices & reports ..                                                                                    | 728 railroads .....       | 5 notifications + 1 tech rpt.         | 45 minutes/4 hours .....  | 8                         |
| —GRMS vehicle output reports .....                                                                                         | 728 railroads .....       | 50 reports .....                      | 5 minutes .....           | 4                         |
| —GRMS vehicle exception reports .....                                                                                      | 728 railroads .....       | 50 reports .....                      | 5 minutes .....           | 4                         |
| —GRMS/PTLF—procedures for data integrity.                                                                                  | 728 railroads .....       | 4 proc. docs. ....                    | 2 hours .....             | 8                         |
| —GRMS training programs/sessions .....                                                                                     | 728 railroads .....       | 2 programs + 5 sessions.              | 16 hours .....            | 112                       |
| —GRMS inspection records .....                                                                                             | 728 railroads .....       | 50 records .....                      | 2 hours .....             | 100                       |
| 213.118—Continuous welded rail (CWR); plan review and approval:                                                            |                           |                                       |                           |                           |
| —Plans w/written procedures for CWR .....                                                                                  | 279 railroads .....       | 279 plans .....                       | 4 hours .....             | 1,116                     |
| —Notification to FRA and RR employees of CWR plan effective date.                                                          | 279 RRs/80,000 employees. | 279 + 80,000 notifications.           | 15 minutes + 2 minutes    | 2,737                     |
| —Written submissions after plan disapproval.                                                                               | 728 railroads .....       | 20 written submissions                | 2 hours .....             | 40                        |
| —Final FRA disapproval and plan amendment.                                                                                 | 728 railroads .....       | 20 amended plans .....                | 1 hour .....              | 20                        |
| 213.119—Continuous welded rail (CWR); plan contents:                                                                       |                           |                                       |                           |                           |
| —Annual CWR training of employees .....                                                                                    | 37 railroads .....        | 80,000 tr. employees ...              | 30 minutes .....          | 40,000                    |
| —Recordkeeping .....                                                                                                       | 279 railroads .....       | 2,000 records .....                   | 10 minutes .....          | 333                       |
| —Recordkeeping for CWR rail joints .....                                                                                   | 279 railroads .....       | 360,000 rcds. ....                    | 2 minutes .....           | 12,000                    |
| —Periodic records for CWR rail joints .....                                                                                | 279 railroads .....       | 480,000 rcds. ....                    | 1 minute .....            | 8,000                     |
| —Copy of track owner's CWR procedures ..                                                                                   | 279 railroads .....       | 279 manuals .....                     | 10 minutes .....          | 47                        |
| 213.233—Track inspections—Notations                                                                                        | 728 railroads .....       | 12,500 notations .....                | 1 minute .....            | 208                       |
| 213.237—Inspection of rail (New Requirements):                                                                             |                           |                                       |                           |                           |
| —Detailed request to FRA to change designation of a rail inspection segment or establish a new segment.                    | 10 railroads .....        | 50 requests .....                     | 15 minutes .....          | 13                        |
| —Notification to FRA and all affected employees of designation's effective date after FRA's approval/conditional approval. | 10 railroads .....        | 50 notices + 120 notices/bulletins.   | 15 minutes .....          | 43                        |
| —Notice to FRA that service failure rate target in paragraph (a) of this section is not achieved.                          | 10 railroads .....        | 12 notices .....                      | 15 minutes .....          | 3                         |
| —Explanation to FRA as to why performance target was not achieved and provision to FRA of remedial action plan.            | 10 railroads .....        | 12 letters of explanation + 12 plans. | 15 minutes .....          | 6                         |
| 213.241—Inspection records .....                                                                                           | 728 railroads .....       | 1,542,089 records .....               | Varies .....              | 1,672,941                 |
| 213.303—Responsibility for compliance .....                                                                                | 2 railroads .....         | 1 notification .....                  | 8 hours .....             | 8                         |
| 213.305—Designation of qualified individuals; general qualifications Designations (partially qualified).                   | 2 railroads .....         | 20 designations .....                 | 10 minutes .....          | 3                         |
| 213.317—Waivers .....                                                                                                      | 2 railroads .....         | 1 petition .....                      | 80 hours .....            | 80                        |
| 213.329—Curves; elevation and speed limitations:                                                                           |                           |                                       |                           |                           |
| —FRA approval of qualified vehicle types based on results of testing.                                                      | 2 railroads .....         | 2 documents .....                     | 80 hours .....            | 160                       |

| CFR Section                                                                                                                                             | Respondent universe | Total annual responses   | Average time per response | Total annual burden hours |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|--------------------------|---------------------------|---------------------------|
| —Written notification to FRA prior to implementation of higher curving speeds.                                                                          | 2 railroads .....   | 3 notifications .....    | 40 hours .....            | 120                       |
| —Written consent of other affected track owners obtained by railroad.                                                                                   | 2 railroads .....   | 3 written consents ..... | 45 minutes .....          | 2                         |
| 213.333—Automated vehicle-based inspection systems:                                                                                                     |                     |                          |                           |                           |
| —Request for atypical measurements .....                                                                                                                | 10 railroads .....  | 1 request .....          | 8 hours .....             | 8                         |
| —TGMS output/exception reports .....                                                                                                                    | 10 railroads .....  | 18 reports .....         | 20 hours .....            | 360                       |
| —Track/vehicle performance measurement system: copies of most recent exception reports/additional records.                                              | 10 railroads .....  | 13 reports/records ..... | 20 hours .....            | 260                       |
| —Notification to track personnel when on-board accelerometers indicate track related problem.                                                           | 10 railroads .....  | 10 notices .....         | 40 hours .....            | 400                       |
| —Requests for an alternate location for device measuring lateral accelerations.                                                                         | 10 railroads .....  | 10 requests .....        | 40 hours .....            | 400                       |
| —Report to FRA providing analysis of collected monitoring data.                                                                                         | 10 railroads .....  | 4 reports .....          | 8 hours .....             | 32                        |
| 213.341—Initial inspection of new rail and welds:                                                                                                       |                     |                          |                           |                           |
| —Mill inspection .....                                                                                                                                  | 2 railroads .....   | 2 reports .....          | 16 hours .....            | 32                        |
| —Welding plant inspection .....                                                                                                                         | 2 railroads .....   | 2 reports .....          | 16 hours .....            | 32                        |
| —Inspection of field welds .....                                                                                                                        | 2 railroads .....   | 125 records .....        | 20 minutes .....          | 42                        |
| 213.343—Continuous welded rail (CWR) .....                                                                                                              | 2 railroads .....   | 150 records .....        | 10 minutes .....          | 25                        |
| 213.345—Vehicle/track system qualification:                                                                                                             |                     |                          |                           |                           |
| —Vehicle qualification program for all vehicle types operating at track Class 6 speeds or above or at curving speeds above 5 inches of cant deficiency. | 10 railroads .....  | 10 programs .....        | 120 hours .....           | 1,200                     |
| —Previously qualified vehicle types qualification programs.                                                                                             | 10 railroads .....  | 10 programs .....        | 80 hours .....            | 800                       |
| —Written consent of other affected track owners obtained by railroad.                                                                                   | 10 railroads .....  | 1 written consent .....  | 8 hours .....             | 8                         |
| 213.347—Automotive or railroad crossings at grade:                                                                                                      |                     |                          |                           |                           |
| —Protection plans .....                                                                                                                                 | 1 railroad .....    | 2 plans .....            | 8 hours .....             | 16                        |
| 213.369—Inspection records:                                                                                                                             |                     |                          |                           |                           |
| —Record of inspection of track .....                                                                                                                    | 2 railroads .....   | 500 records .....        | 1 minute .....            | 8 hours                   |
| —Internal defect inspections and remedial action taken.                                                                                                 | 2 railroads .....   | 50 records .....         | 5 minutes .....           | 4                         |

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package that is being submitted to OMB, please contact Mr. Robert Brogan, Information Clearance Officer, Federal Railroad Administration, at 202–493–6292 (*Robert.Brogan@dot.gov*), or Ms. Kimberly Toone, Records Management Officer, Federal Railroad Administration, at 202–493–6132 (*Kim.Toone@dot.gov*).

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to the Office of Management and Budget at the following address: *oira\_submissions@*

*omb.eop.gov*. *mailto:victor.angelo@fra.dot.gov*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

#### D. Environmental Impact

FRA has evaluated this final rule in accordance with its “Procedures for Considering Environmental Impacts” (FRA’s Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this action is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA’s Procedures. 64 FR 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA’s Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action

significantly affecting the quality of the human environment.

#### E. Federalism Implications

Executive Order 13132, “Federalism” (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. This final rule will not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. FRA has also determined that this final rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Moreover, FRA notes that RSAC, which recommended the majority of this final rule, has as permanent members two organizations representing State and local interests: AASHTO and ASRSM. Both of these State organizations concurred with the RSAC recommendations made in this rulemaking. RSAC regularly provides recommendations to the Administrator of FRA for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the federalism implications of this final rule from these representatives or

from any other representatives of State government.

However, this final rule could have preemptive effect by operation of law under 49 U.S.C 20106 (sec. 20106). Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the “local safety or security hazard” exception to section 20106.

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under sec. 20106. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

#### F. Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act (2 U.S.C. 1532) further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement” detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in the expenditure, in the aggregate, of \$100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

#### G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” See 66 FR 28355 (May 22, 2001). Under the Executive Order a “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this final rule is not a “significant energy action” within the meaning of the Executive Order.

#### H. Privacy Act Statement

Anyone is able to search the electronic form of any comment or petition for reconsideration received into any of DOT’s dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, if submitted on behalf of an association, business, labor union, etc.). Please see the privacy notice at <http://www.regulations.gov/#/privacyNotice>. You may review DOT’s complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may visit <http://www.dot.gov/privacy.html>.

#### List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

#### The Rule

For the reasons discussed in the preamble, FRA amends part 213 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

#### PART 213—[AMENDED]

■ 1. The authority citation for part 213 continues to read as follows:

**Authority:** 49 U.S.C. 20102–20114 and 20142; Sec. 403, Div. A, Public Law 110–432, 122 Stat. 4885; 28 U.S.C. 2461, note; and 49 CFR 1.89.



**Subpart A—General**

## ■ 2. Revise § 213.3(b) to read as follows:

**§ 213.3 Application.**

\* \* \* \* \*

(b) This part does not apply to track:  
 (1) Located inside an installation that is not part of the general railroad system of transportation (i.e., a plant railroad). As used in this part, a plant railroad means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility's own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that track by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the

general railroad system of transportation. Similarly, this exclusion does not apply to track over which a general system railroad operates, even if that track is located within a plant railroad;

(2) Used exclusively for tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation. As used in this part, tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation means a tourist, scenic, historic, or excursion operation conducted only on track used exclusively for that purpose (i.e., there is no freight, intercity passenger, or commuter passenger railroad operation on the track); or

(3) Used exclusively for rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

**Subpart D—Track Structure**

## ■ 3. Revise § 213.113 to read as follows:

**§ 213.113 Defective rails.**

(a) When an owner of track learns that a rail in the track contains any of the defects listed in the table contained in paragraph (c) of this section, a person designated under § 213.7 shall

determine whether the track may continue in use. If the designated person determines that the track may continue in use, operation over the defective rail is not permitted until—

- (1) The rail is replaced or repaired; or
- (2) The remedial action prescribed in the table contained in paragraph (c) of this section is initiated.

(b) When an owner of track learns that a rail in the track contains an indication of any of the defects listed in the table contained in paragraph (c) of this section, the track owner shall verify the indication. The track owner must verify the indication within four hours, unless the track owner has an indication of the existence of a defect that requires remedial action A, A2, or B identified in the table contained in paragraph (c) of this section, in which case the track owner must immediately verify the indication. If the indication is verified, the track owner must—

- (1) Replace or repair the rail; or
- (2) Initiate the remedial action prescribed in the table contained in paragraph (c) of this section.

(c) A track owner who learns that a rail contains one of the following defects shall prescribe the remedial action specified if the rail is not replaced or repaired, in accordance with this paragraph's table:

**REMEDIAL ACTION TABLE**

| Defect                              | Length of defect (inch(es))     |                   | Percentage of existing rail head cross-sectional area weakened by defect |                   | If the defective rail is not replaced or repaired, take the remedial action prescribed in note |
|-------------------------------------|---------------------------------|-------------------|--------------------------------------------------------------------------|-------------------|------------------------------------------------------------------------------------------------|
|                                     | More than                       | But not more than | Less than                                                                | But not less than |                                                                                                |
| Compound Fissure .....              | .....                           | .....             | 70 .....                                                                 | 5 .....           | B.                                                                                             |
|                                     |                                 |                   | 100 .....                                                                | 70 .....          | A2.                                                                                            |
|                                     |                                 |                   |                                                                          | 100 .....         | A.                                                                                             |
| Transverse Fissure .....            |                                 |                   | 25 .....                                                                 | 5 .....           | C.                                                                                             |
| Detail Fracture .....               |                                 |                   | 60 .....                                                                 | 25 .....          | D.                                                                                             |
| Engine Burn Fracture .....          |                                 |                   | 100 .....                                                                | 60 .....          | A2, or [E and H].                                                                              |
| Defective Weld .....                |                                 |                   |                                                                          | 100 .....         | A, or [E and H].                                                                               |
| Horizontal Split Head               |                                 |                   |                                                                          |                   |                                                                                                |
| Vertical Split Head                 |                                 |                   |                                                                          |                   |                                                                                                |
| Split Web .....                     | 1 .....                         | 2 .....           |                                                                          |                   | H and F.                                                                                       |
| Piped Rail .....                    | 2 .....                         | 4 .....           |                                                                          |                   | I and G.                                                                                       |
| Head Web Separation .....           | 4 .....                         |                   |                                                                          |                   | B.                                                                                             |
| Defective Weld (Longitudinal) ..... | (1) .....                       | (1) .....         |                                                                          |                   | A.                                                                                             |
| Bolt Hole Crack .....               | 1½ .....                        | 1 .....           |                                                                          |                   | H and F.                                                                                       |
|                                     | 1 .....                         | 1½ .....          |                                                                          |                   | H and G.                                                                                       |
|                                     | 1½ .....                        |                   |                                                                          |                   | B.                                                                                             |
|                                     | (1) .....                       | (1) .....         |                                                                          |                   | A.                                                                                             |
| Broken Base .....                   | 1 .....                         | 6 .....           |                                                                          |                   | D.                                                                                             |
|                                     | 6 (2) .....                     |                   |                                                                          |                   | A, or [E and I].                                                                               |
| Ordinary Break .....                |                                 |                   |                                                                          |                   | A or E.                                                                                        |
| Damaged Rail .....                  |                                 |                   |                                                                          |                   | C.                                                                                             |
| Flattened Rail Crushed Head .....   | Depth ≥ ⅜<br>and Length<br>≥ 8. |                   |                                                                          |                   | H.                                                                                             |

(1) Break out in rail head.

(2) Remedial action D applies to a moon-shaped breakout, resulting from a derailment, with length greater than 6 inches but not exceeding 12 inches and width not exceeding one-third of the rail base width.

**Notes:**

A. Assign a person designated under § 213.7 to visually supervise each operation over the defective rail.

A2. Assign a person designated under § 213.7 to make a visual inspection. After a visual inspection, that person may authorize operation to continue without continuous visual supervision at a maximum of 10 m.p.h. for up to 24 hours prior to another such visual inspection or replacement or repair of the rail.

B. Limit operating speed over the defective rail to that as authorized by a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance. The operating speed cannot be over 30 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

C. Apply joint bars bolted only through the outermost holes to the defect within 10 days after it is determined to continue the track in use. In the case of Class 3 through 5 track, limit the operating speed over the defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit the speed to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. When a search for internal rail defects is conducted under § 213.237, and defects are discovered in Class 3 through 5 track that require remedial action C, the operating speed shall be limited to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower, for a period not to exceed 4 days. If the defective rail has not been removed from the track or a permanent repair made within 4 days of the discovery, limit operating speed over the defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. When joint bars have not been applied within 10 days, the speed must be limited to 10 m.p.h. until joint bars are applied.

D. Apply joint bars bolted only through the outermost holes to the defect within 7 days after it is determined to continue the track in use. In the case of Class 3 through 5 track, limit operating speed over the defective rail to 30 m.p.h. or less as authorized by a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance, until joint bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track

concerned, whichever is lower. When joint bars have not been applied within 7 days, the speed must be limited to 10 m.p.h. until the joint bars are applied.

E. Apply joint bars to the defect and bolt in accordance with § 213.121(d) and (e).

F. Inspect the rail within 90 days after it is determined to continue the track in use. If the rail remains in the track and is not replaced or repaired, the reinspection cycle starts over with each successive reinspection unless the reinspection reveals the rail defect to have increased in size and therefore become subject to a more restrictive remedial action. This process continues indefinitely until the rail is removed from the track or repaired. If not inspected within 90 days, limit speed to that for Class 2 track or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower, until it is inspected.

G. Inspect rail within 30 days after it is determined to continue the track in use. If the rail remains in the track and is not replaced or repaired, the reinspection cycle starts over with each successive reinspection unless the reinspection reveals the rail defect to have increased in size and therefore become subject to a more restrictive remedial action. This process continues indefinitely until the rail is removed from the track or repaired. If not inspected within 30 days, limit speed to that for Class 2 track or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower, until it is inspected.

H. Limit operating speed over the defective rail to 50 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

I. Limit operating speed over the defective rail to 30 m.p.h. or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower.

(d) As used in this section—

(1) *Bolt hole crack* means a crack across the web, originating from a bolt hole, and progressing on a path either inclined upward toward the rail head or inclined downward toward the base. Fully developed bolt hole cracks may continue horizontally along the head/web or base/web fillet, or they may progress into and through the head or base to separate a piece of the rail end from the rail. Multiple cracks occurring in one rail end are considered to be a single defect. However, bolt hole cracks occurring in adjacent rail ends within the same joint must be reported as separate defects.

(2) *Broken base* means any break in the base of the rail.

(3) *Compound fissure* means a progressive fracture originating from a horizontal split head that turns up or down, or in both directions, in the head of the rail. Transverse development normally progresses substantially at a right angle to the length of the rail.

(4) *Crushed head* means a short length of rail, not at a joint, which has drooped or sagged across the width of the rail head to a depth of  $\frac{3}{8}$  inch or more below the rest of the rail head and 8 inches or more in length. Unlike flattened rail where the depression is visible on the rail head only, the sagging or drooping is also visible in the head/web fillet area.

(5) *Damaged rail* means any rail broken or otherwise damaged by a derailment, broken, flat, or unbalanced wheel, wheel slipping, or similar causes.

(6) *Defective weld* means a field or plant weld containing any discontinuities or pockets, exceeding 5 percent of the rail head area individually or 10 percent in the aggregate, oriented in or near the transverse plane, due to incomplete penetration of the weld metal between the rail ends, lack of fusion between weld and rail end metal, entrainment of slag or sand, under-bead or shrinkage cracking, or fatigue cracking. Weld defects may originate in the rail head, web, or base, and in some cases, cracks may progress from the defect into either or both adjoining rail ends. If the weld defect progresses longitudinally through the weld section, the defect is considered a split web for purposes of remedial action required by this section.

(7) *Detail fracture* means a progressive fracture originating at or near the surface of the rail head. These fractures should not be confused with transverse fissures, compound fissures, or other defects which have internal origins. Detail fractures may arise from shelled spots, head checks, or flaking.

(8) *Engine burn fracture* means a progressive fracture originating in spots where driving wheels have slipped on top of the rail head. In developing downward these fractures frequently resemble the compound or even transverse fissures with which they should not be confused or classified.

(9) *Flattened rail* means a short length of rail, not at a joint, which has flattened out across the width of the rail head to a depth of  $\frac{3}{8}$  inch or more below the rest of the rail and 8 inches or more in length. Flattened rail occurrences have no repetitive regularity and thus do not include corrugations, and have no apparent localized cause such as a weld

or engine burn. Their individual length is relatively short, as compared to a condition such as head flow on the low rail of curves.

(10) *Head and web separation* means a progressive fracture, longitudinally separating the head from the web of the rail at the head fillet area.

(11) *Horizontal split head* means a horizontal progressive defect originating inside of the rail head, usually  $\frac{1}{4}$  inch or more below the running surface and progressing horizontally in all directions, and generally accompanied by a flat spot on the running surface. The defect appears as a crack lengthwise of the rail when it reaches the side of the rail head.

(12) *Ordinary break* means a partial or complete break in which there is no sign of a fissure, and in which none of the other defects described in this paragraph (d) is found.

(13) *Piped rail* means a vertical split in a rail, usually in the web, due to failure of the shrinkage cavity in the ingot to unite in rolling.

(14) *Split web* means a lengthwise crack along the side of the web and extending into or through it.

(15) *Transverse fissure* means a progressive crosswise fracture starting from a crystalline center or nucleus inside the head from which it spreads outward as a smooth, bright, or dark round or oval surface substantially at a right angle to the length of the rail. The distinguishing features of a transverse fissure from other types of fractures or defects are the crystalline center or nucleus and the nearly smooth surface of the development which surrounds it.

(16) *Vertical split head* means a vertical split through or near the middle of the head, and extending into or through it. A crack or rust streak may show under the head close to the web or pieces may be split off the side of the head.

#### § 213.119 [Amended]

- 4. Remove and reserve § 213.119(h)(7)(ii).

#### Subpart F—Inspection

- 5. Revise § 213.237 to read as follows:

#### § 213.237 Inspection of rail.

(a) In addition to the inspections required by § 213.233, each track owner shall conduct internal rail inspections sufficient to maintain service failure rates per rail inspection segment in accordance with this paragraph (a) for a 12-month period, as determined by the track owner and calculated within 45 days of the end of the period. These rates shall not include service failures

that occur in rail that has been replaced through rail relay since the time of the service failure. Rail used to repair a service failure defect is not considered relayed rail. The service failure rates shall not exceed—

(1) 0.1 service failure per year per mile of track for all Class 4 and 5 track;

(2) 0.09 service failure per year per mile of track for all Class 3, 4, and 5 track that carries regularly-scheduled passenger trains or is a hazardous materials route; and

(3) 0.08 service failure per year per mile of track for all Class 3, 4, and 5 track that carries regularly-scheduled passenger trains and is a hazardous materials route.

(b) Each rail inspection segment shall be designated by the track owner no later than March 25, 2014 for track that is Class 4 or 5 track, or Class 3 track that carries regularly-scheduled passenger trains or is a hazardous materials route and is used to determine the milepost limits for the individual rail inspection frequency.

(1) To change the designation of a rail inspection segment or to establish a new segment pursuant to this section, a track owner must submit a detailed request to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer (Associate Administrator). Within 30 days of receipt of the submission, FRA will review the request. FRA will approve, disapprove, or conditionally approve the submitted request, and will provide written notice of its determination.

(2) The track owner's existing designation shall remain in effect until the track owner's new designation is approved or conditionally approved by FRA.

(3) The track owner shall, upon receipt of FRA's approval or conditional approval, establish the designation's effective date. The track owner shall advise in writing FRA and all affected railroad employees of the effective date.

(c) Internal rail inspections on Class 4 and 5 track, or Class 3 track with regularly-scheduled passenger trains or that is a hazardous materials route, shall not exceed a time interval of 370 days between inspections or a tonnage interval of 30 million gross tons (mgt) between inspections, whichever is shorter. Internal rail inspections on Class 3 track that is without regularly-scheduled passenger trains and not a hazardous materials route must be inspected at least once each calendar year, with no more than 18 months between inspections, or at least once every 30 mgt, whichever interval is longer, but in no case may inspections be more than 5 years apart.

(1) Any rail used as a replacement plug rail in track that is required to be tested in accordance with this section must have been tested for internal rail flaws.

(2) The track owner must verify that any plug rail installed after March 25, 2014 has not accumulated more than a total of 30 mgt in previous and new locations since its last internal rail flaw test, before the next test on the rail required by this section is performed.

(3) If plug rail not in compliance with this paragraph (c) is in use after March 25, 2014, trains over that rail must not exceed Class 2 speeds until the rail is tested in accordance with this section.

(d) If the service failure rate target identified in paragraph (a) of this section is not achieved, the track owner must inform FRA of this fact within 45 days of the end of the defined 12-month period in which the performance target is exceeded. In addition, the track owner may provide to FRA an explanation as to why the performance target was not achieved and provide a remedial action plan.

(1) If the performance target rate is not met for two consecutive years, then for the area where the greatest number of service failures is occurring, either:

(i) The inspection tonnage interval between tests must be reduced to 10 mgt; or

(ii) The class of track must be reduced to Class 2 until the target service failure rate is achieved.

(2) In cases where a single service failure would cause the rate to exceed the applicable service failure rate as designated in paragraph (a) of this section, the service failure rate will be considered to comply with paragraph (a) of this section unless a second such failure occurs within a designated 12-month period. For the purposes of this paragraph (d)(2), a period begins no earlier than January 24, 2014.

(e) Each defective rail shall be marked with a highly visible marking on both sides of the web and base except that, where a side or sides of the web and base are inaccessible because of permanent features, the highly visible marking may be placed on or next to the head of the rail.

(f) Inspection equipment shall be capable of detecting defects between joint bars, in the area enclosed by joint bars.

(g) If the person assigned to operate the rail defect detection equipment (i.e., the qualified operator) determines that a valid search for internal defects could not be made over a particular length of track, that particular length of track may not be considered as internally

inspected under paragraphs (a) and (c) of this section.

(h) If a valid search for internal defects could not be conducted, the track owner shall, before expiration of the time or tonnage limits in paragraph (a) or (c) of this section—

(1) Conduct a valid search for internal defects;

(2) Reduce operating speed to a maximum of 25 m.p.h. until such time as a valid search can be made; or

(3) Replace the rail that had not been inspected.

(i) The person assigned to operate the rail defect detection equipment must be a qualified operator as defined in § 213.238 and have demonstrated proficiency in the rail flaw detection process for each type of equipment the operator is assigned.

(j) As used in this section—

(1) *Hazardous materials route* means track over which a minimum of 10,000 car loads or intermodal portable tank car loads of hazardous materials as defined in 49 CFR 171.8 travel over a period of one calendar year; or track over which a minimum of 4,000 car loads or intermodal portable tank car loads of the hazardous materials specified in 49 CFR 172.820 travel, in a period of one calendar year.

(2) *Plug rail* means a length of rail that has been removed from one track location and stored for future use as a replacement rail at another location.

(3) *Service failure* means a broken rail occurrence, the cause of which is determined to be a compound fissure, transverse fissure, detail fracture, or vertical split head.

(4) *Valid search* means a continuous inspection for internal rail defects where the equipment performs as intended and equipment responses are interpreted by a qualified operator as defined in § 213.238.

■ 6. Add § 213.238 to read as follows:

**§ 213.238 Qualified operator.**

(a) Each provider of rail flaw detection shall have a documented training program in place and shall identify the types of rail flaw detection equipment for which each equipment operator it employs has received training and is qualified. A provider of rail flaw detection may be the track owner. A track owner shall not utilize a provider of rail flaw detection that fails to comply with the requirements of this paragraph.

(b) A qualified operator shall be trained and have written authorization from his or her employer to:

(1) Conduct a valid search for internal rail defects utilizing the specific type(s)

of equipment for which he or she is authorized and qualified to operate;

(2) Determine that such equipment is performing as intended;

(3) Interpret equipment responses and institute appropriate action in accordance with the employer's procedures and instructions; and

(4) Determine that each valid search for an internal rail defect is continuous throughout the area inspected and has not been compromised due to environmental contamination, rail conditions, or equipment malfunction.

(c) To be qualified, the operator must have received training in accordance with the documented training program and a minimum of 160 hours of rail flaw detection experience under direct supervision of a qualified operator or rail flaw detection equipment manufacturer's representative, or some combination of both. The operator must demonstrate proficiency in the rail defect detection process, including the equipment to be utilized, prior to initial qualification and authorization by the employer for each type of equipment.

(d) Each employer shall reevaluate the qualifications of, and administer any necessary recurrent training for, the operator as determined by and in accordance with the employer's documented program. The reevaluation process shall require that the employee successfully complete a recorded examination and demonstrate proficiency to the employer on the specific equipment type(s) to be operated. Proficiency may be determined by a periodic review of test data submitted by the operator.

(e) Each employer of a qualified operator shall maintain written or electronic records of each qualification in effect. Each record shall include the name of the employee, the equipment to which the qualification applies, date of qualification, and date of the most recent reevaluation, if any.

(f) Any employee who has demonstrated proficiency in the operation of rail flaw detection equipment prior to January 24, 2014, is deemed a qualified operator, regardless of the previous training program under which the employee was qualified. Such an operator shall be subject to paragraph (d) of this section.

(g) Records concerning the qualification of operators, including copies of equipment-specific training programs and materials, recorded examinations, demonstrated proficiency records, and authorization records, shall be kept at a location designated by the employer and available for inspection and copying by FRA during regular business hours.

■ 7. Amend § 213.241 by:

■ a. Redesignating paragraphs (d) and (e) as (f) and (g),

■ b. Revising paragraph (c),

■ c. Adding new paragraphs (d) and (e), and

■ d. Revising newly redesignated paragraphs (f) and (g) to read as follows:

**§ 213.241 Inspection records.**

\* \* \* \* \*

(c) Records of internal rail inspections required by § 213.237 shall specify the—

(1) Date of inspection;

(2) Track inspected, including beginning and end points;

(3) Location and type of defects found under § 213.113;

(4) Size of defects found under § 213.113, if not removed prior to the next train movement;

(5) Initial remedial action taken and the date thereof; and

(6) Location of any track not tested pursuant to § 213.237(g).

(d) The track owner shall retain a rail inspection record under paragraph (c) of this section for at least two years after the inspection and for one year after initial remedial action is taken.

(e) The track owner shall maintain records sufficient to demonstrate the means by which it computes the service failure rate on all track segments subject to the requirements of § 213.237(a) for the purpose of determining compliance with the applicable service failure rate target.

(f) Each track owner required to keep inspection records under this section shall make those records available for inspection and copying by FRA upon request.

(g) For purposes of complying with the requirements of this section, a track owner may maintain and transfer records through electronic transmission, storage, and retrieval provided that—

(1) The electronic system is designed so that the integrity of each record is maintained through appropriate levels of security such as recognition of an electronic signature, or another means, which uniquely identifies the initiating person as the author of that record. No two persons shall have the same electronic identity;

(2) The electronic storage of each record shall be initiated by the person making the inspection within 24 hours following the completion of that inspection;

(3) The electronic system shall ensure that each record cannot be modified in any way, or replaced, once the record is transmitted and stored;

(4) Any amendment to a record shall be electronically stored apart from the record which it amends. Each

amendment to a record shall be uniquely identified as to the person making the amendment;  
(5) The electronic system shall provide for the maintenance of inspection records as originally submitted without corruption or loss of data;  
(6) Paper copies of electronic records and amendments to those records that

may be necessary to document compliance with this part shall be made available for inspection and copying by FRA at the locations specified in paragraph (b) of this section; and  
(7) Track inspection records shall be kept available to persons who performed the inspections and to

persons performing subsequent inspections.  
  
■ 8. Amend appendix B to part 213 by adding the entry for § 213.238 in numerical order under subpart F to read as follows:  
  
**Appendix B to Part 213—Schedule of Civil Penalties**

| Section               |                          |  |  |  | Violation | Willful violation <sup>1</sup> |
|-----------------------|--------------------------|--|--|--|-----------|--------------------------------|
| * * * * *             |                          |  |  |  | *         | *                              |
| SUBPART F—Inspection: |                          |  |  |  |           |                                |
| * * * * *             |                          |  |  |  | *         | *                              |
| 213.238               | Qualified operator ..... |  |  |  | \$2,500   | \$5,000                        |
| * * * * *             |                          |  |  |  | *         | *                              |

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$105,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

Issued in Washington, DC, on January 16, 2014.  
**Joseph C. Szabo,**  
*Administrator.*  
[FR Doc. 2014–01387 Filed 1–23–14; 8:45 am]  
**BILLING CODE 4910–06–P**



# FEDERAL REGISTER

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January 24, 2014

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Part III

The President

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Executive Order 13656—Establishment of Afghanistan and Pakistan  
Strategic Partnership Office and Amendment to Executive Order 12163





# Presidential Documents

**Title 3—****Executive Order 13656 of January 17, 2014****The President****Establishment of Afghanistan and Pakistan Strategic Partnership Office and Amendment to Executive Order 12163**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 202 of the Revised Statutes (22 U.S.C. 2656) and section 3161 of title 5, United States Code, it is hereby ordered as follows:

**Section 1. *Establishment.*** There is established within the Department of State, in accordance with section 3161 of title 5, United States Code, a temporary organization to be known as the Afghanistan and Pakistan Strategic Partnership Office (APSPO).

**Sec. 2. *Purpose of the Temporary Organization.*** The purposes of the APSPO shall be to perform the specific project of supporting executive departments and agencies (agencies) in facilitating a strategic partnership between the U.S. Government and the governments of Afghanistan and Pakistan, promoting further security and stabilization, and transitioning to a normalized diplomatic presence in both countries.

**Sec. 3. *Functions of the Temporary Organization.*** In carrying out the purposes set forth in section 2 of this order, the APSPO shall:

(a) support agencies in transitioning to a strategic partnership with the governments of Afghanistan and Pakistan in the economic, diplomatic, cultural, technology, and security fields, particularly in the areas of program management, rule of law, and program oversight;

(b) coordinate the final drawdown of the Department of State's civilian field operations and staff in Afghanistan;

(c) coordinate and oversee the administration of certain State Department assistance funds; and

(d) perform such other functions related to the specific project set forth in section 2 of this order as the Secretary of State (Secretary) may assign.

**Sec. 4. *Personnel and Administration.*** The APSPO shall be headed by a Director appointed by the Secretary. The APSPO shall be based in Washington, DC, Pakistan, and Afghanistan.

**Sec. 5. *Termination of the Temporary Organization.*** The APSPO shall terminate at the end of the maximum period permitted by section 3161(a)(1) of title 5, United States Code, unless terminated sooner by the Secretary.

**Sec. 6. *Delegation of Certain Determination Functions.*** Executive Order 12163 of September 29, 1979, as amended, is further amended, in section 1–701(c), by striking the semicolon and all subsequent text before the period.

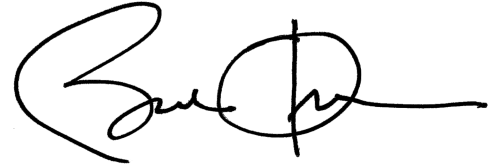
**Sec. 7. *General Provisions.*** (a) This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large circular flourish and a horizontal line extending to the right.

THE WHITE HOUSE,  
*January 17, 2014.*

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