

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 997****[Docket No. 120813326-3458-01]****RIN 0648-BC18****U.S. Integrated Ocean Observing System; Regulations To Certify and Integrate Regional Coordination Entities**

**AGENCY:** U.S. Integrated Ocean Observing System Program Office (IOOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Integrated Ocean Observing System Program Office, which the National Oceanic and Atmospheric Administration (NOAA) is the lead agency for, proposes rules to implement provisions of the Integrated Coastal and Ocean Observation System Act of 2009 (ICOOS Act). Among other things, the ICOOS Act directs the Interagency Ocean Observation Committee (IOOC) to develop and approve certification criteria and procedures for integrating regional information coordination entities (RICEs) into the National Integrated Coastal and Ocean Observation System (System). This proposed rule would accomplish that goal. This rule also implements the provisions of the ICOOS Act establishing that certified entities integrated into the System are, for the purposes of determining liability arising from the dissemination and use of observation data, considered part of NOAA and therefore their employees engaged in the collection, management, and dissemination, of observation data in the System receive the same tort protections for use of that data as Federal employees.

**DATES:** Comments on this proposed rule must be received by August 1, 2013.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NOS-2013-0083, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NOS-2013-0083](http://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2013-0083), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Dave Easter, U.S. Integrated Ocean Observing System Program Office, 1100

Wayne Ave., Suite 1225, Silver Spring, MD 20910.

- *Fax:* (301) 427-2073; Attn: Dave Easter

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Dave Easter, U.S. Integrated Ocean Observing System Program Office, at (301) 427-2451.

**SUPPLEMENTARY INFORMATION:****Background**

The Integrated Coastal and Ocean Observation System Act of 2009 (Pub. L. 111-11) (ICOOS Act or Act, codified at 33 U.S.C. 3601-3610) directs the President, acting through the National Ocean Research Leadership Council (Council), to establish a National Integrated Coastal and Ocean Observation System (System). The System must "include[] in situ, remote, and other coastal and ocean observation, technologies, and data management and communication systems, and [be] designed to address regional and national needs for ocean information, to gather specific data on key coastal, ocean, and Great Lakes variables, and to ensure timely and sustained dissemination and availability of these data." 33 U.S.C. 3601(1). Another purpose of the System is "to fulfill the Nation's international obligations to contribute to the Global Earth Observation System of Systems and the Global Ocean Observing System." 33 U.S.C. 3601(1) and 3603(a).

The System is built upon a national-regional partnership, with contributions from both Federal and non-Federal organizations, promoting the quick and organized collection and distribution of ocean, coastal, and Great Lakes data and data products to meet critical societal needs. System data is used by both governmental and non-governmental concerns, to, among other things, "support national defense, marine

commerce, navigation safety, weather, climate, and marine forecasting, energy siting and production, economic development, ecosystem-based marine, coastal, and Great Lakes resource management, public safety, and public outreach training and education." It is also used to promote public awareness and stewardship of the Nation's waterways, coasts and ocean resources, and to advance scientific understanding of the use, conservation, management, and understanding of healthy ocean, coastal, and Great Lake resources. 33 U.S.C. 3601(1)(A)-(C).

The ICOOS Act directs the Council to establish or designate an Interagency Ocean Observation Committee (IOOC). In 2010, the Joint Subcommittee on Ocean Science and Technology (JSOST), acting on behalf of the Council, established the IOOC. The IOOC replaced, and assumed and expanded the role of its predecessor, the Interagency Working Group on Ocean Observations, which was originally established by the JSOST under the Ocean Action Plan.

Under the ICOOS Act, the IOOC must "develop contract certification standards and compliance procedures for all non-Federal assets, including regional information coordination entities, to establish eligibility for integration into the System." 33 U.S.C. 3603(c)(2)(E). To create the certification criteria, the IOOC chartered two working groups consisting of subject matter experts on IOOS data partners and regional entities to draft recommended certification criteria. The recommended draft criteria were approved by the IOOC in October 2011 and released for public input. After a sixty-day public comment period and adjudication of public input, the IOOC drafted final certification criteria.

In developing certification criteria, the IOOC focused on identifying the governance and management criteria a RICE—organizations that coordinate regional observing efforts; manage and operate observing assets; manage and distribute data; and engage user groups in product development—must have in place to allow NOAA to coordinate non-federal assets for the purposes of the ICOOS Act. The IOOC certification standards ensure the necessary policies, standards, data, information, and services associated with eligibility for integration into the System are appropriately established, coordinated, overseen and enforced.

This rule would, if implemented, establish the criteria and procedures for how RICEs can apply and become certified for and integrated into System. Integration into the System formally

establishes the role of the RICE and ensures that the data collected and distributed by the RICE are managed according to the best practices, as identified by NOAA.

Additionally, under the ICOOS Act, employees of RICEs that NOAA has certified and incorporated into the System who gather and disseminate information under this Act are, for the purposes of determining liability arising from the dissemination and use of observation data, considered to be part of NOAA. In other words, they are federal employees for the purposes of tort liability relating to their work directly related to the System. Only those non-federal entities that agree to meet the standards established under the process described in the ICOOS Act, and that are designated by NOAA as certified entities in the System, will be considered as “certified” for purposes of these regulations.

These proposed regulations satisfy the ICOOS Act requirement that NOAA, as the lead Federal agency for implementing the System, “promulgate program guidelines to certify and integrate non-federal assets, including regional information coordination entities, into the System.” 33 U.S.C. 3603(c)(3)(C). Accordingly, they detail the compliance procedures and requirements for certifying RICEs that satisfy the IOOC-approved certification standards.

Among other things, to become certified, RICEs must provide NOAA with information about their organizational structure and operations, including capacity to gather required System observation data. They must also document their ability to accept and disburse funds and to enter into legal agreements with other entities. RICEs must have by-laws, accountability measures governing boards and an explanation of how they are selected, and be able to provide information about RICE diversity, user feedback processes, and transparency. Moreover, RICEs must submit to NOAA a strategic operation plan to ensure the efficient and effective administration and operation of programs and assets to support the System, and agree to and actually work cooperatively with other governmental and non-governmental entities to the benefit of the System. Importantly, an application for certification must include a description of the RICE’s management of ongoing regional system operations and maintenance. The RICE must illustrate its standard operating procedures for ensuring the continued validity and maintenance of equipment used; strategies to enhance the System.

Additionally, a RICE must also provide a Data Management and Communications Plan documenting how the RICE maintains and controls data quality and distribution. Certification lasts for five years, after which time a certified RICE must apply for re-certification.

These regulations apply to the certification of RICEs only. Further regulations will be developed by NOAA to provide certification for other non-federal assets that do not meet the definition of RICEs.

#### **Classification**

##### *Executive Order 12866*

Under Executive Order (E.O.) 12866, if the proposed regulations, including regulations such as those proposed here, are a “significant regulatory action” as defined in § 3(f) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget (OMB). OMB has determined that this action is not a “significant” regulatory action under E.O. 12866.

##### *Regulatory Flexibility Act*

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows:

The ICOOS Act directs NOAA to “promulgate program guidelines to certify and integrate non-Federal assets, including regional information coordination entities into the System.” 33 U.S.C. 3603(c)(3)(C). This action establishes the criteria and procedures for certifying and integrating RICEs into the Integrated Coastal and Ocean Observation System (System), in compliance with the ICOOS Act.

Specifically, this action proposes to require RICEs to provide NOAA with certain information about their organizational structures, financial capabilities and makeup, oversight, and data quality assurance methods in order to obtain certification under the ICOOS Act. Although most of the affected entities already meet the majority of the requirements proposed here, there may be some minimal costs for some or all of those entities to come into full compliance with these regulations.

Currently, there are eleven RICEs that NOAA expects may be impacted by

these regulations. RICEs are generally partnerships of entities in the academic, private, governmental, tribal, and non-governmental sectors, and are organized either pursuant to § 501(c)(3) of the Internal Revenue Code or by Memorandums of Agreement. Most of these eleven RICEs employ from three to five full- or part-time individuals, either directly or as contractors. They therefore fit into the Regulatory Flexibility Act’s size standards as small organizations, because they “are not-for-profit enterprises independently owned and operated and not dominant in their field.” 5 U.S.C. 601(4).

RICEs primarily depend on funds from NOAA for their operations. Through a series of cooperative agreements, NOAA has been funding these eleven RICEs since FY 2005 to develop the organizational structure, operating procedures, and data management capacity necessary to serve as the entities responsible for planning, coordinating, and operating the regional observing systems. Funding levels to build the organization and coordination capacity of these eleven RICEs, made available through these cooperative agreements, varies by region, but has typically ranged from \$300K to \$400K per year per RICE.

In addition, beginning in FY 2008, each of these eleven RICEs entered into cooperative agreements with NOAA to support data collection, data management, and development of products and services. In FY 2012, the funding amounts for these eleven RICEs ranged from \$1.4 million to \$2.5 million per RICE.

Notably, many of the proposed regulations are an extension of the effort to build the capacity of these eleven RICEs to perform successfully the duties of a RICE as identified in the ICOOS Act. As such, the regulations will likely not impose additional expenses on the affected RICEs, because those entities are, for the most part, already engaging in those activities.

NOAA expects that the greatest economic impacts to RICEs of these regulations will be associated with the staff time necessary to organize and submit to NOAA the information required for certification. However, these costs may be low, because in many cases the RICE may already have the information necessary to meet the certification requirements. In a few cases, some staff effort will be required to develop new materials, but notably that effort will be essentially funded through the RICE’s cooperative agreement with NOAA. Moreover, NOAA expects that RICEs will incur these costs only once every five years,

given the duration of certification and need for renewal, and that the costs associated with preparing the certification materials may be reflected in a temporary loss of coordination capacity. Each RICE's specific information needs are not clear at this time, so the costs cannot be determined with accuracy; however, because most of the information needed to become certified likely already is in the RICE's possession, these costs are likely low.

Another cost that may arise due to these regulations relates to implementation of new procedures at RICEs to manage data and ensure data quality. Most RICEs have some data management and quality assurance programs in place, but satisfying the certification requirements proposed here may result in some RICEs having to re-allocate their existing funds to provide additional resources to improve their data quality and management. As the data quality standards of each RICE currently differs, NOAA cannot determine the costs this rule would impose on any given RICE to meet the new requirements. However, NOAA believes that such costs would likely be a small percentage of their overall operating budgets, and so would not constitute a significant economic impact to the affected entities.

One benefit to RICEs provided by these regulations and the ICOOS Act is the extension of liability protection to RICE employees for data collected and disseminated pursuant to the ICOOS Act. Specifically, employees of entities that are certified and integrated into the System are, for the purposes of determining liability arising from the dissemination and use of observation data, considered to be part of NOAA.

The extension of tort liability protection may in some instances benefit RICEs and their employees. However, NOAA notes that this benefit may be minimal, as past claims against NOAA and the Department for damages arising from allegedly incorrect data are rare and have been for relatively low amounts. Thus, any financial benefits in terms of liability may be limited.

Finally, certification is a voluntary step by RICEs. Although NOAA expects any entity that may qualify as a RICE and currently receives NOAA funds under the ICOOS Act to seek certification, lack of certification does not preclude funding opportunities.

These regulations will affect eleven known small organizations. However, the rules impose no mandatory costs on any of those organizations; rather, the costs to these organizations to become certified are born by the RICEs voluntarily. Nonetheless, because the

affected entities will likely possess most of the information needed for certification, IOOS expects that the overall costs to the entities that result from these rules will be minimal. Because this rule, if implemented, will not result in a substantial economic impact on a significant number of small entities, no Regulatory Flexibility Analysis is required, and none has been prepared.

#### *Paperwork Reduction Act*

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for certification as a RICE is estimated to average 293 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to U.S. Integrated Ocean Observing System Program Office, National Ocean Service, NOAA at the **ADDRESSES** above, and email to *OIRA\_Submission@omb.eop.gov*, or fax to (202) 395-7285.

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

Dated: June 26, 2013.

**Holly A. Bamford,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

#### **List of Subjects in 15 CFR Part 997**

Science and technology, Ocean observing, Certification requirements.

For the reasons set forth in the preamble, NOAA proposes to amend 15

CFR chapter IX by adding part 997 to read as follows:

### **SUBCHAPTER G—REQUIREMENTS FOR CERTIFICATION BY NOAA OF NON-FEDERAL ASSETS INTO THE INTEGRATED COASTAL AND OCEAN OBSERVATION SYSTEM**

#### **PART 997—REGIONAL INFORMATION COORDINATION ENTITIES**

##### **Subpart A—General**

Sec

997.1 Definitions

997.2 Acceptance of Procedures by a RICE

##### **Subpart B—Certification and Decertification Process for a Regional Information Coordination Entity (RICE)**

Sec

997.10 Eligibility

997.11 Application Process

997.12 Review by NOAA

997.13 Certification Process

997.14 Certification Duration and Renewal

997.15 Audit and Decertification

997.16 Final Action

##### **Subpart C—Certification and Application Requirements for a RICE**

Sec

997.20 General

997.21 Organizational Structure

997.22 Membership Policy

997.23 Strategic Operational Plan

997.24 Gaps Identification

997.25 Financial Oversight

997.26 [Reserved]

997.27 [Reserved]

997.28 [Reserved]

997.29 [Reserved]

997.30 Civil Liability

*Authority:* 33 U.S.C. 3603 *et seq.*

##### **Subpart A—General**

#### **§ 997.1 Definitions.**

*Certification.* For purposes of these regulations, the term “certification” means the granting by NOAA of status to a non-federal entity as a participating RICE of the System authorized by § 12304 of the ICOOS Act. An applicant will not be considered to be participating in the System unless (1) it agrees to meet the certification standards issued by the Administrator issued herein, and (2) the Administrator declares the applicant to be part of the System as a certified RICE.

*Non-Federal Assets.* The term “non-federal assets” means all relevant coastal and ocean observation technologies, related basic and applied technology research and development, and public education and outreach programs that are integrated into the System and are managed through State, regional organizations, universities, nongovernmental organizations, or the private sector.

*Owned and/or operated by the RICE.* Non-Federal Assets that are either owned and/or operated directly by the RICE, or supported financially in part or in full by the RICE.

*Regional Information Coordination Entity.* The term “regional information coordination entity” means an organizational body that is certified or established by contract or memorandum by the lead Federal agency (NOAA) designated in the ICOOS Act, and that coordinates State, Federal, local, and private interests at a regional level with the responsibility of engaging the private and public sectors in designing, operating, and improving regional coastal and ocean observing systems in order to ensure the provision of data and information that satisfy the needs of user groups from the respective regions. The term “regional information coordination entity” includes regional associations described in the System Plan.

*Employee of a Regional Information Coordination Entity.* An individual identified in subsections 997.23(d)(3) or 997.23(f)(1) of these Regulations.

*System.* The term “System” means the National Integrated Coastal and Ocean Observation System established in accordance with § 12304 of the ICOOS Act (33 U.S.C. 3603).

*System Plan.* The term “System Plan” means the plan contained in the document entitled “Ocean.US Publication No. 9, The First Integrated Ocean Observing System (IOOS) Development Plan,” as updated by the Council under these regulations.

#### **§ 997.2 Acceptance of Procedures by a RICE.**

By its voluntary entrance or participation in the System, the RICE acknowledges and accepts the procedures and requirements established by these regulations.

### **Subpart B—Certification and Decertification Process for a Regional Information Coordination Entity (RICE)**

#### **§ 997.10 Eligibility.**

Any non-Federal entity may submit an application for certification as a RICE as defined in the ICOOS Act and these Regulations.

#### **§ 997.11 Application Process.**

(a) The applicant for certification shall submit an application package containing the information and documentation outlined in Subpart C—Certification and Application Requirements for a RICE of these Regulations. The submission package shall include the application form,

available online at <http://www.ioos.noaa.gov/certification>.

(b) Submission shall be made to NOAA at the address below, or to such other address as may be indicated in the future: Director U.S. IOOS Program Office, NOAA, 1100 Wayne Ave, Suite 1225, Silver Spring, MD 20910. Submissions may also be made online at <http://www.ioos.noaa.gov/certification>.

#### **§ 997.12 Review by NOAA.**

(a) After receiving an application package, NOAA shall have up to 90 calendar days to review the application package and decide whether to certify the applicant.

(b) Before the 90 calendar days have elapsed, NOAA may request additional information, in which case NOAA shall have up to 30 additional calendar days after that additional information has been received by NOAA, above and beyond the original 90 calendar days, to review the application package and decide whether to certify the applicant.

(c) NOAA’s decision whether to certify the applicant shall be based on whether the RICE demonstrates that it satisfies the current IOOC certification criteria and these regulations.

#### **§ 997.13 Certification Process.**

(a) NOAA’s decision whether to certify the applicant, along with the reason for its decision, shall be delivered to the applicant via letter delivered by first class mail and by electronic means.

(b) Applicants receiving a certification determination in the affirmative shall be designated as “certified” RICES by NOAA. NOAA shall memorialize this status via a memorandum of agreement with the applicant. Certification shall mean that a RICE is incorporated into the System.

(c) A certified RICE shall provide NOAA with written notification of the RICE’s intention to change any details of its organizational structure or Strategic Operational Plan, from those details originally provided to satisfy the requirements of these Regulations, and shall request approval from NOAA for the change. After receiving the written notification, NOAA shall have up to 30 calendar days to review the requested change and decide whether to approve the requested change. NOAA’s decision, along with the reason for its decision, shall be included in a written notification to the RICE.

#### **§ 997.14 Certification Duration and Renewal.**

(a) Certification of a RICE shall be for a term of 5 years, unless otherwise specified by the NOAA Administrator.

(b) Certification may be renewed, at the request of the RICE, for a period of five years. A RICE seeking to renew its certification shall provide NOAA with a written request to renew at least 120 calendar days before the expiration of the existing certification. The request shall include the application form, available online at <http://www.ioos.noaa.gov/certification>, and all information providing evidence that the applicant satisfies the IOOC certification criteria and NOAA regulations promulgated to certify and integrate non-Federal assets into the System.

(c) After receiving a written request for renewal of certification, NOAA shall have up to 90 calendar days to review the request and decide whether to renew the certification.

(d) Before the 90 calendar days have elapsed, NOAA may request additional information, in which case NOAA shall have up to 30 additional calendar days after that additional information has been received by NOAA, above and beyond the original 90 calendar days, to review the request and decide whether to renew the certification.

(e) NOAA’s decision whether to renew the certification shall be based on whether the RICE continues to demonstrate that it satisfies the current IOOC certification criteria and these regulations. NOAA’s decision, along with the reason for its decision, shall be included in a written notification to the RICE.

#### **§ 997.15 Audit and Decertification.**

(a) NOAA may audit a RICE that it has certified to ensure compliance with the IOOC certification criteria and these regulations. NOAA may conduct an audit without advance notice.

(b) NOAA may decertify a RICE. In general, a RICE may be decertified when:

(1) The results of an audit indicate that the RICE no longer satisfies the requirements under which it was certified;

(2) Other relevant reasons for decertification become apparent.

(c) NOAA’s intent to decertify a RICE, along with the identification of a specific deficiency(ies) and a recommended corrective action(s), shall be included in a written notification to the RICE. After receiving NOAA’s written notification, a RICE shall have up to 30 calendar days to request in writing that NOAA reconsider its intent to decertify the RICE. The RICE’s request for reconsideration shall contain sufficient information for NOAA to determine whether to grant the request for reconsideration. Alternatively, the RICE may correct the deficiency(ies)

identified by NOAA within 30 calendar days, notify NOAA in writing of the corrective action(s) taken, and provide sufficient evidence for NOAA to determine the correctness and effectiveness of the corrective action(s) taken.

(d) If a RICE submits to NOAA a written request for reconsideration or a written assertion that the identified deficiency(ies) has been corrected, NOAA shall have up to 60 calendar days after receipt of the request or assertion, to review the request for reconsideration or the assertion of corrective action. NOAA's decision, along with the reason for its decision, shall be delivered to the applicant via letter delivered by first class mail and by electronic means.

(e) Upon decertification, a RICE shall no longer be incorporated into the System.

(f) A RICE may act voluntarily to terminate its certification at any time by notifying NOAA in writing of its desire to do so. Upon receipt of the notification by NOAA, the RICE will no longer be incorporated into the System.

#### **§ 997.16 Final Action.**

NOAA's decision, whether to certify, renew or decertify a RICE shall be considered final agency action.

### **Subpart C—Certification and Application Requirements for a RICE**

#### **§ 997.20 General.**

(a) For the purposes of these certification regulations, when the verb "describe" is used it indicates that the RICE shall give an account in text that responds to the requirement. This text shall contain sufficient information to demonstrate how the RICE satisfies the certification requirement. The RICE may include a link(s) to additional information. When the verb "document" is used, it indicates that the RICE shall furnish a document(s) that responds to the requirement. A text statement accompanying the document(s) will normally be necessary to provide context for the document(s) and to demonstrate how the RICE satisfies the certification requirement. The RICE may include a link to a document in the accompanying text statement.

(b) Documentation that addresses the certification requirements may include references to existing RICE documents. All documents and materials may be submitted directly to the U.S. IOOS Program Office or made accessible for public viewing on the RICE's Web site.

#### **§ 997.21 Organizational Structure.**

(a) To become certified, a RICE must

Demonstrate an organizational structure capable of gathering required System observation data, supporting and integrating all aspects of coastal and ocean observing and information programs within a region and that reflects the needs of State and local governments, commercial interests, and other users and beneficiaries of the System and other requirements specified under this subtitle and the System Plan. 33 U.S.C. 3603(c)(4)(A)(i).

(b) A RICE's application shall

(1) Describe the RICE's organizational structure (e.g., 501(c)(3) tax-exempt organization, establishment via MOU or MOA).

(2) Document the RICE's ability to satisfy applicable legal criteria for accepting and disbursing funds, and entering into agreements. Sufficient documentation may be provided in the form of: (1) Evidence of a current grant, cooperative agreement, or contract in good standing with the Federal government; or (2) evidence of fiscal agreements, standard operating procedures for financial activities, and proof of an audit process.

(3) Document the RICE's measures for addressing issues of accountability and liability. For this criterion, accountability and liability refer to the RICE's governance and management activities. Sufficient documentation may be provided in the form of (1) a conflict of interest policy for the Governing Board or governing body, which clearly states that a member of the governing board will declare any conflict of interest he or she may have and will recuse him or herself from associated funding decisions, and (2) a policy statement in the RICE's by-laws that addresses liability issues.

(4) Describe the process the RICE uses to set priorities for distributing funds (e.g., requirement for Governing Board or governing body approval when responding to funding opportunities or adjusting to funding level changes in existing agreements).

(5) Document the by-laws, signed articles of agreement, or any binding agreements that demonstrate how the RICE establishes and maintains a Governing Board or governing body. The documentation shall demonstrate:

(i) How the composition of the Governing Board or governing body is selected and how it is representative of regional ocean observing interests. NOAA defines "representative" in this specific context to include geographic, sector, expertise, and stakeholder considerations.

(ii) How and with what frequency the RICE solicits and receives advice on RICE participant diversity, stakeholder

coordination, and engagement strategies, to ensure the provision of data and information that satisfy the needs of user groups.

(iii) How the RICE collects and assesses user feedback to gauge the effectiveness of the regional system and subsystems in satisfying user needs, and how the RICE responds to this user feedback in setting its priorities. Sufficient documentation may be provided in the form of a description of the method the RICE uses in its annual planning process to assess priorities among the identified user needs in the region and to respond to those user needs.

(iv) Steps the RICE takes to ensure decisions on priorities and overall regional system design are transparent and available. At a minimum, RICE priorities and regional system design decisions shall be made accessible for public viewing on the RICE's Web site.

#### **§ 997.22 Membership Policy.**

The RICE application shall describe:

(a) The process by which individuals or organizations may formally participate in the governance activities of the RICE;

(b) The rights and responsibilities of this participation;

(c) The process by which the RICE strives for organizational diversity through intra-regional geographic representation, and diversity of activities and interests from both public and private sectors; and

(d) How the RICE allows for participation from adjacent regions or nations.

#### **§ 997.23 Strategic Operational Plan.**

(a) To become certified, a RICE must:

Develop and operate under a strategic operational plan that will ensure the efficient and effective administration of programs and assets to support daily data observations for integration into the System, pursuant to the standards approved by the Council;

and

work cooperatively with governmental and non-governmental entities to identify and provide information products of the System for multiple users within the service area of the regional information coordination entities.

The Strategic Operational Plan is a high-level document that outlines how a RICE manages and operates an integrated regional observing system. This Plan should evolve as a RICE matures, new technologies become available, regional priorities change, and new users and stakeholders are identified. The Plan may be responsive

to changing funding levels, and shall contain the following sections, referencing other plans directly when applicable. The RICE application shall provide descriptions and documentation that the Strategic Operational Plan satisfies the requirements of § 997.23.

(b) Background and Context

The RICE shall describe:

(1) The role of the RICE in furthering the development of the regional component of the System;

(2) The process by which the RICE updates the Strategic Operational Plan at least once every five years and how the RICE seeks inputs from the broader user community; and

(3) The RICE's primary partners and any contributing observing systems. For the purposes of § 997.23, NOAA defines a primary partner as any organization or individual that contributes significant staff time, funding or other resources to project activities. This is not an exhaustive list of all RICE partners but the primary partners the RICE is working with on a given project.

(c) Goals and Objectives

The RICE shall describe:

(1) How the RICE addresses marine operations; coastal hazards; ecosystems, fisheries and water quality; and climate variability and change; and

(2) The major objectives that guide the RICE's priorities for data collection and management, development of products and services, research and development, and education and outreach.

(d) Operational Plan for the Observing System

The RICE's Strategic Operational Plan shall include or reference an Operational Plan for the Observing System that:

(1) Describes the key products, services and outcomes that the observing system will deliver;

(2) Describes the elements of the operational integrated observing system that will deliver those products, services and outcomes;

(3) Documents to NOAA's satisfaction that the individual(s) responsible for RICE operations has the necessary qualifications and possesses relevant professional education and work experience to deliver observations successfully. At a minimum the RICE shall:

(i) Identify the individual responsible for overall RICE management;

(ii) Identify, as applicable, the individual responsible for observations system management in the region;

(iii) Provide the curriculum vitae for each identified individual; and

(iv) Identify the procedures used to evaluate the capability of the individual(s) identified in subsection 997.23(d)(3) to conduct the assigned duties responsibly.

(4) Describes how the RICE manages ongoing regional system operations and maintenance. At a minimum the RICE shall:

(i) Describe the RICE's standard operating procedures for ensuring that those responsible for managing hardware owned and/or operated by the RICE calibrate, validate, operate, and maintain equipment regularly and in accordance with manufacturer guidance or industry best practice (other management factors that influence the delivery of quality data, such as managing software applications, are addressed in subsection 997.23(f); and

(ii) Describe the RICE's standard operating procedures for ensuring that those responsible for managing hardware owned and/or operated by the RICE maintain equipment inventories, shipping logs and instrument history logs.

(e) Development of a Strategy To Sustain and Enhance the System

The RICE shall describe its strategy for balancing changes in regional priorities with the need to maintain established data sets, the primary value of which may be in their long-term records. At a minimum the description shall:

(1) Identify the guiding principles that inform the strategy;

(2) Reference and show connections to a long-term (five-to-ten-year) regional Build-out Plan for the full implementation of the regional observing system based on the RICE's priorities and identified user needs; and

(3) Relate the annual planning process the RICE uses to review its priorities in light of funding levels and its plans for system enhancement as outlined in the regional Build-out Plan.

(f) Data Management and Communications (DMAC) Plan

The RICE's Strategic Operational Plan shall include or reference a DMAC Plan that:

(1) Documents to NOAA's satisfaction that the individual responsible for management of data operations for the RICE has the necessary technical skills, and possesses relevant professional education and work experience to support DMAC capabilities and functionality for the System. At a minimum the DMAC Plan shall:

(i) Identify the individual responsible for the coordination and management of observation data in the region; and

(ii) Provide the curriculum vitae for the identified individual.

(iii) Identify the procedures used to evaluate the capability of the individual identified in subsection 997.23(f)(1) to conduct the assigned duties responsibly.

(2) Describes how data are ingested, managed and distributed, including a description of the flow of data through the RICE data assembly center from the source to the public dissemination/access mechanism. The description shall include any transformations or modifications of data along the data flow pathway including, but not limited to, format translations or aggregations of component data streams into an integrated product.

(3) Describes the data quality control procedures that have been applied to data that are distributed by the RICE. All data shall be quality controlled. For each data stream, describe the quality control procedure applied to the data, by the RICE or other named entity, between the data's collection and publication by the RICE. The description will also include a reference to the procedure used (e.g., QARTOD, JCOMM/IODE, scientific literature).

(4) Adheres to the NOAA Data Sharing Procedural Directive.<sup>1</sup> The System is an operational system; therefore the RICE should strive to provide as much data as possible, in real-time or near real-time, to support the operation of the System. When data are collected in part or in whole with funds distributed to a RICE through the U.S. IOOS Program Office, the RICE should strive to make the data available as soon as logistically feasible for each data stream. When data are not collected with funds distributed to a RICE through the U.S. IOOS Program Office, the data may be made available in accordance with any agreement made with the data provider.

(5) Describes how the RICE will implement data management protocols promulgated by the IOOC and the U.S. IOOS Program Office in a reasonable and timely manner as defined for each protocol.

(6) Documents the RICE's data archiving process or describes how the RICE intends to archive data at a national archive center (e.g., NODC, NGDC, NCDC) in a manner that follows guidelines outlined by that center. Documentation shall be in the form of a Submission Agreement, Submission Information Form (SIF) or other, similar data producer-archive agreement.

<sup>1</sup> NOAA Data Sharing Policy for Grants and Cooperative Agreements Procedural Directive, Version 2.0 [https://www.nosc.noaa.gov/EDMC/documents/EDMC\\_PD-DSPNG\\_final\\_v2.pdf](https://www.nosc.noaa.gov/EDMC/documents/EDMC_PD-DSPNG_final_v2.pdf).

## (g) Budget Plan

The RICE's Strategic Operational Plan shall include or reference a Budget Plan that:

- (1) Identifies who supports the RICE financially;
- (2) Outlines the RICE's plans and strategies for diversifying funding sources and opportunities;
- (3) Identifies how RICE priorities guide funding decisions; and
- (4) Assesses funding constraints and the associated risks to the observing System that the RICE must address for the future.

**§ 997.24 Gaps Identification.**

(a) To become certified, a RICE must identify gaps in observation coverage needs for capital improvements of Federal assets and non-Federal assets of the System, or other recommendations to assist in the development of annual and long-term plans and transmit such information to the Interagency Ocean Observing Committee via the Program Office[,] 33 U.S.C. 3603(c)(4)(A)(ii).

(b) The RICE application shall

- (1) Document that the RICE's asset inventory contains up-to-date information. This could be demonstrated by a database or portal accessible for public viewing and capable of producing a regional summary of observing capacity;
- (2) Provide a regional Build-out Plan that identifies the regional priorities for products and services, based on its understanding of regional needs, and a description of the integrated system (observations, modeling, data management, product development, outreach, and R&D). The RICE shall review and update the Build-out Plan at least once every five years; and
- (3) Document the priority regional gaps in observation coverage needs, as determined by an analysis of the RICE asset inventory and Build-out Plan. The RICE shall review and update the analysis of priority regional gaps in observation coverage needs at least once every five years.

**§ 997.25 Financial Oversight.**

(a) To become certified, a RICE must comply with all financial oversight requirements established by the Administrator, including requirement relating to audits. 33 U.S.C. 3603(c)(4)(A)(v).

(b) The RICE's application shall document compliance with the terms and conditions set forth in 2 CFR Part 215—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations, Subpart C—Post

Award Requirements. This Subpart prescribes standards for financial management systems, among others. (Compliance with this criterion can be demonstrated by referencing any existing grant, cooperative agreement, or contract the RICE has with NOAA.)

(c) The RICE shall document annually the RICE's operating and maintenance costs for all observing platforms and sensors, etc., owned and/or operated by the RICE.

**§§ 997.26 through 997.29 [Reserved]****§ 997.30 Civil Liability.**

(a) For purposes of determining liability arising from the dissemination and use of observation data gathered pursuant to the ICOOS Act and these regulations, any non-Federal asset or regional information coordination entity incorporated into the System by contract, lease, grant, or cooperative agreement that is participating in the System shall be considered to be part of the National Oceanic and Atmospheric Administration. Any employee of such a non-Federal asset or regional information coordination entity, while operating within the scope of his or her employment in carrying out the purposes of this subtitle, with respect to tort liability, is deemed to be an employee of the Federal Government.

(b) The ICOOS Act's grant of civil liability protection (and thus the RICE's limited status as part of NOAA) applies only to a RICE that:

- (1) Is participating in the System, meaning the RICE has been certified by NOAA in accordance with the ICOOS Act and these regulations; and
  - (2) Has been integrated into the System by contract, lease, grant or cooperative agreement with NOAA.
- (c) An "employee" of a regional information coordination entity is an individual who satisfies all of the following requirements:

(1) The individual is employed or contracted by a certified RICE that has been integrated into the System by contract, lease, grant or cooperative agreement with NOAA, and that is participating in the System, as defined in § 997.30(b), above;

(2) The individual is identified by the RICE, as required in § 997.23(d)(3), as one of three individuals responsible for the collection, management, or dissemination of ocean, coastal, and Great Lakes observation data; and

(3) The individual is responsive to federal government control.

(d) The protection afforded to employees of a RICE with regard to liability applies only to specific individuals employed or contracted by

a RICE who meet the requirements of 997.30(c) and who are responsible for the collection, management, or dissemination of ocean, coastal, and Great Lakes observation data. The RICE must identify to NOAA's satisfaction: (1) The individual responsible for overall system management, (2) as applicable, the individual responsible for observations system management, and (3) the individual responsible for management of data operations. In accepting certification, the RICE will concede to NOAA the power to ensure these individuals comply with the requirements of the program regulations in their daily operations and that they are responsive to NOAA through the agreement the RICE has with NOAA.

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**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[REG-140789-12]

RIN 1545-BL42

**Information Reporting for Affordable Insurance Exchanges**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to requirements for Affordable Insurance Exchanges (Exchanges) to report information relating to the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010. These proposed regulations affect Exchanges that make qualified health plans available to individuals and employers.

**DATES:** Written (including electronic) comments and requests for a public hearing must be received by September 3, 2013.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-140789-12), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-140789-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at